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PRICE-ANDERSON ACT AMENDMENTS OF 1987

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Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1865]

The Committee on Environment and Public Works reports an original bill (S. 1865) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve the procedures for the protection of the public from nuclear accidents and recommends that the bill do pass.

I. GENERAL STATEMENT

This legislation, the Price-Anderson Act Amendments of 1987 (amending section 170 of the Atomic Energy Act of 1954, as amended, and related sections) extends and improves the procedures for compensating the public in the event of a nuclear incident arising from activities of Nuclear Regulatory Commission (NRC) licensees and Department of Energy (DOE) contractors involved in DOE's high-level nuclear waste program.

The bill increases the amount of funds that would be immediately available without the need for further Congressional action to compensate the public for damages resulting from nuclear incidents at large commercial nuclear power plants or as a result of activities involving DOE high-level waste contractors, sets forth the procedures to be followed with respect to damages that exceed this amount of available funds, including the procedures for Congressional review, and extends for thirty years the authority of the NRC and DOE to bring new licensees or high-level waste contractors within the coverage of the Price-Anderson system.

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II. PURPOSE AND BACKGROUND

A. History of the act

In 1954, when Congress enacted the Atomic Energy Act of 1954 and thereby eliminated the federal government's monopoly over the ownership of nuclear materials and facilities, those in the private sector who were interested in participating in the atomic power industry were reluctant to risk significant financial resources on the new, and as yet untested, enterprise, given the potential for catastrophic accidents involving such materials or facilities and the unavailability of private insurance to cover public liability arising out of such a catastrophic accident.

In response to these concerns, Congress enacted the Price-Anderson Act in 1957, in order to remove the deterrent of potentially catastrophic liability.

The original Price-Anderson Act contained three central features. First, the Act established a limit on the aggregate liability of those who wished to undertake activities involving the handling or use of radioactive materials, either through contract with the Federal Government or under a license issued by the Federal Government for the private development of such activities. The limit on liability was initially set at the sum of $500,000,000 plus the amount of financial protection that a licensee or contractor could obtain under reasonable terms and conditions from private sources. In 1957, the amount of insurance available through private sources was $60,000,000.

Second, the 1957 Act provided that any person who might be held liable for public liability resulting from a nuclear incident, including not only the party directly engaged in the activity that results in the nuclear incident but any other person as well, was to be indemnified under the Price-Anderson system—the so-called "channeling of liability" or "omnibus coverage" provisions of the Act.

And third, the 1957 Act provided that all public liability claims that exceeded the required level of private financial protection would be indemnified by the Federal Government, up to the aggregate limit on liability.

In order to carry out the objectives of this Act, the Atomic Energy Commission (AEC) was authorized to enter into indemnity agreements with AEC licensees or contractors for a 10-year period, beginning in 1957.

In 1966, prior to the scheduled expiration of the Act, Congress revised and extended the Act for another 10 year period. The three central features of the 1957 Act were retained. At this time, however, Congress modified the Act to add a fourth key provision, referred to as the "waiver of defenses" provision, which significantly improved the system for swift and effective compensation of public liability claims. Under this modification, Congress provided that the party defendant in any action involving public liability arising from a large nuclear accident, referred to as an "extraordinary nuclear occurrence," could be required to waive—(1) any issue or defense as to conduct of the claimant or fault of persons indemnified, (2) any issue or defense as to charitable or governmental immunity; and (3) any issue or defense based on any statute of limitations, if suit is instituted within three years from when the claimant first knew or reasonably could have known of his injury or damage (but in no event more than twenty years after the date of the nuclear incident).

In 1975, prior to the scheduled expiration of the Act in 1977, Congress once again amended and extended the Price-Anderson Act. At this time, in order to phase out the federal indemnity provided for under the Act, Congress adopted a provision establishing a system of retrospective premiums to be paid by licensees of large commercial nuclear powerplants (i.e., powerplants with a rated capacity of 100,000 electrical kilowatts or more). Under this provision, which is now reflected in the current law, each utility operating a large nuclear reactor licensed by the NRC is required to contribute up to $5,000,000 per reactor to cover public liability, in the event of an incident at that reactor or at any other reactor for which damages exceed the amount of available primary financial protection.

The 1975 reauthorization of the Act extended the aggregate limit on liability, and further provided that this amount shall be equal to the sum of the two layers of financial protection or $560,000, whichever is greater. Upon the licensing of the 80th reactor in 1982, these two layers provided $560,000,000 in financial protection and the layer of federal indemnity was thereby phased out.

With 111 large reactors currently licensed to operate, the amount currently available under Price-Anderson to compensate the public in the event of a nuclear incident is $715,000,000—$160,000,000 in primary insurance and $555,000,000 through the retrospective premium system ($5,000,000 multiplied by 111). In the event that public liability exceeds this amount, the 1975 amendments provided that the Congress will thoroughly review the situation and take whatever action it deems necessary to protect the public from the consequences of a disaster of such magnitude.

Other than the inclusion of the waiver of defenses provision in the 1966 amendments, the provisions of the Price-Anderson Act regarding the indemnification of DOE contractors have remained essentially the same since 1957. DOE contractors continue to be indemnified for all public liability up to $500 million, and liability is limited to this amount.

B. Price-Anderson expiration

The authority of the NRC to indemnify new licensees expired on August 1, 1987. NRC licensees that were covered under the Act prior to August 1, 1987 continue to be covered by the Act after August 1, 1987, under the same terms and conditions. A list of such licensees currently covered under the Act is contained in Appendix I. However, the coverage of the Act would not be available to any person receiving a license (or construction permit, in the case of a commercial reactor) from the NRC after August 1, 1987.

The DOE's authority to enter into new indemnity agreements under Price-Anderson also expired on August 1, 1987. Contractors with whom indemnification agreements have been executed by DOE prior to this date continue to be covered under the existing Price-Anderson Act, but no new indemnity agreements could be executed under this Act after August 1, 1987. A list of contractors currently covered under the Act is contained in Appendix II.

C. Claims experience

The experience with the claims arising out of the accident at Three Mile Island illustrates some of the key benefits resulting from the Price-Anderson system. The claims experience to date under the Price-Anderson Act is contained in Appendices III and IV.

D. Need for reauthorization

The Price-Anderson system, including the waiver of defenses provisions, the omnibus coverage, and the predetermined sources of funding, provides persons seeking compensation for injuries as a result of a nuclear incident with significant advantages over the procedures and standards for recovery that might otherwise be applicable under State tort law. The Act also provides a mechanism whereby the federal government can continue to encourage private sector participation in the beneficial uses of nuclear materials.

An extension of the Price-Anderson Act's coverage to new licensees and to new high-level waste contractural activities is therefore in the public interest.

The existing Price-Anderson system, however, can and should be substantially modified in a manner that will better achieve the goal of providing in advance of any nuclear incident a mechanism for full compensation of the public that is equitable, efficient, reliable, and comprehensive. The Committee thus supports an extension of the Price-Anderson Act, with the modifications contained in this bill.

III. MAJOR PROVISIONS OF THE COMMITTEE BILL

NUCLEAR REGULATORY COMMISSION LICENSEES

A. Large commercial nuclear powerplants

The bill reported by the Committee extends the authority of the NRC to enter into indemnity agreements with large commercial nuclear powerplant licensees (i.e., those powerplants with a rated capacity of 100,000 electrical kilowatts or more) for an additional 30 years, from the current expiration date of August 1, 1987 to August 1, 2017.

For these licensees, the bill continues the primary and secondary financial protection provisions of the existing act by—(i) preserving the existing primary layer of financial protection, and (ii) expanding the secondary layer of financial protection by increasing the amount of the retrospective premium required for individual reactors from $5,000,000 to $60,000,000, to be assessed at a rate not to exceed $12,000,000 per year. The bill also includes detailed procedures establishing the steps to be taken in the event that damages exceed the amount of funds available through the primary and secondary layers of financial protection.

1. Primary financial protection.—Each licensee would be required to purchase the maximum amount of available private insurance (currently $160 million).

2. Secondary financial protection.—As under current law, each licensee would be required to contribute to a retrospective premium system in the event of an accident for which public liability exceeds the amount of primary insurance available. The bill raises the maximum amount that each licensee could be required to contribute to the retrospective premium system as a result of an accident from the present amount of $5,000,000 to the amount of $60,000,000. The bill further directs the NRC to adjust the maximum deferred premium annually to reflect the aggregate percentage change in the gross national product deflator.

Under this provision, a licensee could not be required to contribute more than $12,000,000 per accident in any one year. Thus, for example, if there occurred an accident of sufficient magnitude to require that each licensee contribute the maximum retrospective premium of $60,000,000, each licensee would have 5 years, at a rate of $12,000,000 per year, to meet its obligation. The authority of the NRC to establish the maximum amount which the aggregate deferred premiums charged for each facility within one calender year may not exceed (i.e., the total amount of such assessments payable in the same year) is retained under this bill.

In the event that public liability claims emerge at a rate faster than the funds made available through the retrospective premium system, the bill authorizes the NRC to borrow funds from the Treasury, subject to appropriations, to satisfy such claims. This provision is intended to ensure that the annual limitation on the amount that licensees are required to contribute does not limit the amount of compensation that may be paid in any one year, provided that the funds will eventually be collected through the annual retrospective assessment on licensees. This provision does not authorize the Commission to borrow funds in the event that licensees default on their responsibility to make payments under the retrospective assessment system. The bill provides that any funds that the NRC borrows from the Treasury, together with interest, are to be repaid from the unpaid balance of retroactive premiums.

The bill increases the amount of the maximum deferred premium in order to make available a larger pool of available funds and a larger contribution by nuclear licensees before any congressional action may be necessary. The increase should make the compensation system for damages within the amount provided by this larger pool more equitable, reliable, and efficient.

At the same time, it is neither feasible, prudent, nor equitable to establish a compensation system in advance of a nuclear incident that would require these licensees to pay for all damages resulting from such an incident. Accordingly, absent further congressional action, the bill limits the amount that nuclear licensees are required to contribute in the event of a catastrophic nuclear accident to the sum of the primary and secondary layers of financial protection.

3. Claims in excess of primary and secondary financial protection.—There does exist, however, an extremely small possibility of a catastrophic nuclear incident that could result in damages in excess of the amount of funds that would be available to compensate such claims under the primary and secondary layers of financial protection provided for in this bill. For such an incident, there should be a predictable system that will provide for the full compensation of such claims.

At the same time, because of the extraordinary nature of such an incident, as well as the potentially widespread consequences should such an incident occur, this legislation reflects the Committee's position that Congress should have the opportunity to review this situation following an accident, to ensure that the system for compensating any claims is equitable, efficient, and workable.

Accordingly, in an effort to achieve these two goals, the legislation reported by the Committee sets forth the procedures governing Congressional review of catastrophic accidents and compensation of accident victims for claims that exceed the amount of funds that would be available under the required primary and secondary layers of financial protection. Those procedures are summarized in this section.

Under the existing Price-Anderson Act, the adjudication of public liability claims in excess of the sum of the primary and secondary levels of financial protection is foreclosed by the imposition of an aggregate limit on liability. The removal of the aggregate limit on liability will permit courts to adjudicate public liability claims in excess of the amount of financial protection required of licensees. The bill further provides that for any such claims, the United States shall be deemed to be the liable party. In this regard, the bill provides that the United States shall assume the rights and liabilities of the indemnified person and that the Attorney General of the United States shall appear on behalf of the indemnified party.

The removal of the aggregate limit on liability is not intended to result in the imposition of any additional liabilities on indemnified licensees beyond those imposed under the primary and secondary levels of financial protection required in this bill. In this regard, the bill specifically provides that execution of judgments that exceed the primary and secondary levels of financial protection against any indemnified person is prohibited and that satisfaction of such judgments shall be made exclusively in accordance with the provisions of section 170 i. of this bill.

In the event that a court determines, through the adjudication of claims, that pulic liability claims exceed the amount of funds available from the primary and secondary layers of financial protection provided for under this legislation, section 170 i. (1) of this bill provides that the President is authorized to submit to Congress a plan to establish a funding mechanism for the payment of such excess claims and for Congress to consider the recommended plan under expedited procedures. This provision is intended to give the President the opportunity to recommend, and the Congress the opportunity to consider, alternative sources for the payment of such excess claims, together with recommendations for structuring the payment of such claims over time. The expedited procedures for Congressional review of any Presidential recommendation have been included in this legislation to provide greater assurance that the Congress will be able to fully consider and vote on proposals for alternative funding mechanisms.

The sources of funds for any alternate funding mechanism include any source of funds that the Congress would have the constitutional authority to assess for each post-accident costs. The statutory limitation on payments required under the primary and secondary levels of financial protection should not be construed to preclude a future Congress from imposing additional revenue measures upon NRC licensees (or indeed any other class of persons) to provide funds to compensate victims of a nuclear accident.

If the Congress failed to approve a plan submitted by the President or to approve its own plan, then the bill provides that all excess claims will be paid from the Judgment Appropriation (31 U.S.C. 1304). The inclusion of this authority does not express a determination one way or the other with regard to whether the federal treasury is the preferred source of funding for public liability in excess of the primary and secondary levels of financial protection. Rather, this provision is intended to ensure that Congressional inaction does not mean that valid claims remain unpaid. The Judgment Appropriation is a permanent, indefinite appropriation established to make payments for monetary judgments awarded against the United States, and thus would need no further action by the Congress to be utilized under these circumstances.

The bill also includes procedures, contained in section 170 i.(2), to permit the President and the Congress an opportunity to review and modify the methods described above of determining compensation for catastrophic accidents, once such a catastrophic accident has occurred and prior to the adjudication of public liability claims. Accordingly, the bill provides special procedures for the President to submit and Congress to consider plans to establish alternative approaches for determining and satisfying public liability claims.

Specifically, the bill provides that if the President determines at any time after a nuclear incident that public liability claims may exceed the funds available under the primary and secondary layers of financial protection and so notifies Congress of this determination, the President may recommend to Congress that the adjudication of all claims for which a final judgment has not yet been rendered be suspended, while the President formulates and the Congress considers an alternate approach or approaches to the determination and satisfaction of claims. If the President recommends that the adjudication of claims be suspended, the bill requires the President to recommend such an alternate approach or approaches. The bill requires that the approach or approaches set forth a mechanism for the determination and full satisfaction of public liability for such incident. Any such plan or plans submitted by the President would be considered by Congress under expedited procedures.

In the event that Congress approves the President's recommended alternate approach for determining and satisfying claims, or adopts its own alternate approach, such alternate approach shall establish the exclusive procedures and substantive rights for the determination and satisfaction of such claims.

In the event that Congress fails to approve an alternative approach to the determination and satisfaction of such claims, those claims would be considered under the approach described earlier.

B. Other commercial reactor licensees

The bill extends the NRC's indemnification authority for an additional thirty years for NRC licensees other than large commercial nuclear power plants.

The NRC may require that commercial reactors other than large commercial reactors maintain financial protection in an amount determined by the NRC, based on the availability of private insurance, the type, size, purpose, and location of the facility, and other factors pertaining to the hazard. For those licensees required to maintain financial protection of less than $560,000,000, the NRC is required to indemnify such licensees for all public liability in excess of the amount of financial protection required of the licensee, provided that the aggregate indemnity shall not exceed $500,000,000, less the amount by which the licensee's financial protection exceeds $60,000,000. The liability of such licensees is limited to $500,000,000 plus the amount of financial protection required, but in no event more than $560,000,000.

C. Federal agency reactors

Reactors operated by other federal agencies that are required to be operated under license from the NRC are not required to maintain financial protection, but continue to be indemnified by the NRC for liability up to $500,000,000, the limit on liability for such licensees.

D. Non-profit and educational reactors

Non-profit educational institutions operating reactors licensed by the NRC are not required to maintain financial protection, although many have elected to do so on their own. The NRC is required to indemnify such licensees for liability in excess of $250,000 but not to exceed $500,000,000. Liability is limited to $500,000,000.

E. Materials licensees

The NRC has the discretion to require materials licensees to obtain financial protection. For those materials licensees for which financial protection is required in an amount less than $560,000,000, the NRC is required to provide indemnification in the amount of $500,000,000, less the amount by which the financial protection required exceeds $60,000,000. Liability for licensees required to maintain financial protection is limited to $500,000,000 plus the amount of financial protection required, but in no event more than $560,000,000.

F. Nuclear pharmacies

Nuclear pharmacies provide radioisotopes to hospitals and the medical profession for the diagnosis and treatment of various diseases and injuries. The use of these radiopharmaceuticals is widespread and essential for many activities in modern medicine. Information presented to the Committee indicated that nuclear pharmacies licensed by the NRC are unable to obtain adequate private insurance to cover liability in the event of a nuclear incident involving such materials. Accordingly, nuclear pharmacies today face many of the same obstacles faced by nuclear utilities and contractors with respect to the unavailability of adequate financial protection for activities involving nuclear materials. It is important to remove these obstacles in order to ensure a continued supply of these vitally important medical products.

Accordingly, the bill broadens the scope of Price-Anderson to cover nuclear incidents arising out of the operation of a nuclear pharmacy or hospital nuclear medicine department. The "related activities" covered by this section include the manufacture of the radiopharmaceuticals, since the intent of this provision is to remove barriers to the production and distribution of these items.

Indemnified pharmacies or departments licensed by the NRC will be exempt from the requirement that such licensees maintain financial protection, and will be indemnified by the NRC for public liability in excess of $250,000 but not in excess of $500,000,000. Liability of such licensees will be limited to $500,000,000.

Claims arising from the administration or misadministration of radiopharmaceuticals during diagnosis or therapy would not be covered by this provision. Thus, this provision does not provide federal indemnification or limited liability for malpractice suits against physicians, hospitals, or nuclear pharmacies using or dispensing radiopharmaceuticals. Similarly, it does not provide indemnification or limit liability for product liability suits against manufacturers, hospitals or nuclear pharmacies dispensing radiopharmaceuticals. The scope of the coverage provided by this provision is limited to releases of such materials as a result of activities other than patient diagnosis or therapy.

DEPARTMENT OF ENERGY HIGH LEVEL WASTE CONTRACTORS

A. Compensation and indemnification

The bill extends DOE's indemnification authority for an additional thirty years for contractors involved in the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, and thereby provides a mechanism for compensation for accidents arising out of these activities that is similar to the compensation mechanism for accidents at commercial nuclear power plants. The compensation system for damages arising from accidents performed under license or contract with the federal government should not depend upon the type of activity that caused the damage.

The Nuclear Waste Policy Act of 1982 established a framework for the national program to develop a permanent geologic repository for high-level radioactive waste and spent nuclear fuel. To gain public acceptance in potential host states for the repository and in states through which the waste may be transported it will be necessary to provide assurance that the citizens of such states will be fully compensated for any damages arising from the disposal, storage, or transportation of radioactive materials pursuant to this program. Additionally, because of the continued inadequacy of private insurance to cover the potential liability arising from the program, it appears that it will be necessary to continue to indemnify potential contractors in the program in order to secure their participation.

Although an extension of DOE's authority under the current Act to indemnify its contractors would provide DOE with sufficient authority to indemnify contractors involved in the nuclear waste program, it is prudent to provide DOE explicitly with such authority in this extension of the Act so that there will not be an ambiguity when the DOE seeks to exercise such authority or in the unlikely event of an accident. Accordingly, the bill clarifies that DOE's authority to indemnify its contractors extends to those contractual activities involving the storage, transportation, and disposal of spent nuclear fuel, high-level radioactive waste, and transuranic waste. Thus, it would be clear that DOE has authority to enter into indemnification agreements with contractors for activities undertaken pursuant to the NWPA involving the risk of a nuclear incident.

As with accidents arising from activities of large commercial nuclear power plants, there would be no limit on liability for accidents involving the storage, disposal, or transportation of nuclear waste. Correspondingly, DOE would be required to provide indemnity for all public liability arising out of the indemnified activity, subject to the procedures and requirements set forth in section 170i.

In the event of a nuclear incident involving nuclear waste and requiring payment by DOE pursuant to an agreement of indemnification, the source of funds for such payments would depend upon the type of waste involved in the incident. The Nuclear Waste Fund is to be the source of funds for accidents involving waste produced as a result of the operation of commercial nuclear power plants. Liability arising from implementation of the NWPA is an additional cost of the program, and thus should be funded in a similar manner as the program itself. The Nuclear Waste Fund was established pursuant to section 302 of the NWPA to provide complete funding for the DOE activities undertaken pursuant to the NWPA. It consists of funds generated from a 1 mil per kilowatt-hour fee imposed upon the generation of electricity by commercial nuclear power plants, and funds to be deposited as a result of a charge to be imposed upon DOE for waste generated by its defense programs. Only the funds deposited from the fees imposed upon commercial reactors may be used as a source of funds for payments for accidents involving commercial waste.

Accidents involving other types of wastes are to be funded from the same sources as accidents involving other DOE contractors. Thus, for example, accidents involving waste generated by defense programs would be compensated from the general revenues of the Treasury. Accidents involving both commercially generated and non-commercially generated wastes would be compensated from both sources, with the proportion from each source depending on the corresponding proportion of waste from each source.

However, as with accidents involving large commercial nuclear power plants, there would be a limit on the amount that could be paid without further Congressional review. Thus, once liability from a waste accident reached the level that would have required Congressional action on a funding mechanism for excess damages had the accident arisen at a commercial power plant, Congressional action on a funding mechanism for damages greater than this amount also would be required for accidents involving nuclear waste.

The procedures for Congressional review of Presidential plans for funding mechanisms, for the suspension of the adjudication of claims, and for the establishment of alternative methods of determining and satisfying claims would be the same for nuclear waste accidents as it is for accidents at large commercial nuclear plants, where liability exceeds the amount provided by the primary and secondary layers of financial protection for such plants. Thus, if the Congress failed to establish a funding mechanism or an alternative method for the adjudication of claims, then all public liability would be compensated from the judgment appropriation.

B. Civil and criminal penalties

The bill includes provisions regarding civil and criminal penalties for violations by indemnified contractors of DOE nuclear-safety related rules, regulations, or orders regarding the storage, disposal, or transportation of nuclear waste. These provisions are identical to the civil and criminal penalty provisions adopted by the Senate Committee on Energy and Natural Resources in S. 748 (S. Rept. No. 100–70).

Civil and criminal penalties can be an effective deterrent to violations by contractors of DOE rules, regulations, and orders. Activities for which indemnification is provided present a risk of a nuclear incident and thus must be undertaken with the utmost care and safety. It is of crucial importance to the public health and safety and the protection of the environment that DOE regulations and orders governing the conduct of such activities be strictly followed. Accordingly, persons that fail to follow such rules, regulations, or orders should be subject to civil penalties, and any person that intentionally violates the Atomic Energy Act or nuclear safety-related rules, regulations, or orders should be subject to criminal penalties.

The civil and criminal penalties that would be available under this provision for violations of DOE rules, regulations, or orders by DOE contractors are similar to those already available for violations of NRC rules, regulations, or orders by NRC licensees. Thus, any contractor indemnified by DOE that violates a DOE regulation or order would be subject to a maximum civil penalty of $100,000 for each such violation. Knowing and willful violations of the Atomic Energy Act or DOE nuclear safety-related regulations, rules, or orders are subject to a maximum $25,000 fine or imprisonment not to exceed two years, or both.

The civil and criminal penalty provisions are not applicable to certain persons listed in the bill operating research and development facilities on a non-profit basis for DOE.

WAIVER OF DEFENSES

Persons indemnified under the bill by NRC or DOE would be required in the event of an ENO to waive—(1) any issue or defense as to conduct of the claimant or fault of persons indemnified, (2) any issue or defense as to charitable or governmental immunity; and (3) any issue or defense based on any statute of limitations, if suit is instituted within three years from when the claimant first knew or reasonably could have known of his injury or damage (but in no event more than thirty years after the date of the nuclear incident).

This generally preserves current law, but extends from twenty to thirty years the time on the statute of limitations waiver. The bill also clarifies that the waiver of defenses provision extends to accidents arising in the course of transportation of nuclear materials to or from, or from the construction or operation of, a nuclear waste storage or disposal facility. The bill also clarifies that the waiver of defenses provision applies to accidents arising from facilities licensed by the NRC to possess or store nuclear materials, for which the NRC requires financial protection.

LITIGATION COSTS

The bill allows attorneys' fees and costs of investigating, settling, and defending claims to be paid from the primary and secondary layers of financial protection. Past experience in toxic tort cases indicates, however, that these costs may be quite substantial, and may even be greater than the amount of funds provided for compensation. It is therefore necessary to provide for the review of these costs in order to minimize the expenditure of funds for purposes other than the compensation of victims.

The bill therefore provides that the district court shall review the costs associated with investigating, settling, prosecuting, and defending claims to determine whether such costs are reasonable and equitable, whether the party seeking such costs has litigated in good faith, avoided unnecessary duplication or delay, or made frivolous claims or defenses. After such review the court may provide for the awarding of such fees as the court deems appropriate.

LENGTH OF EXTENSION

The authority of NRC to provide Price-Anderson coverage to new licensees and the authority of DOE to indemnify high-level waste contractors is extended for thirty years.

This will permit Congress to reexamine the Act and to consider whether conditions in the nuclear industry have changed significantly by August 1, 2017, so as to warrant further modifications in the Act, if extended.

PUNITIVE DAMAGES

The bill clarifies that an award of punitive damages is prohibited if the award would result in any obligation of the United States to make any payments for public liability. This reflects the longstanding policy that the Federal government should not be liable for punitive damages.

Thus, all punitive damage awards would be prohibited in actions involving DOE contractors indemnified under section 170 r. Punitive damage awards also would be prohibited in suits against licensees covered by the retrospective premium system if, as a result of such an award, payments beyond the primary and secondary layers of financial protection would be necessary, since the United States is obligated to provide a source of funding for such claims.

The bill does not otherwise affect current law regarding punitive damages.

FEDERAL JURISDICTION

Under current law, only claims arising from an ENO may be consolidated in federal court. In litigation following the Three Mile Island accident, the U.S. Court of Appeals for the Third Circuit held that federal courts do not have subject matter jurisdiction for claims arising out of a non-ENO nuclear incident. *Stibitz* v. *GPU*, 746 F.2d 993 (3d Cir. 1984), cert. denied, 105 S.Ct. 1187 (1985). The bill expands existing law to allow for the consolidation of claims arising out of any nuclear incident in federal district court.

The experience with claims following the TMI accident demonstrates the advantages of the ability to consolidate claims after the nuclear incident. Attorneys representing both plaintiffs and defendants in the TMI litigation testified before the Committee that the ability to consolidate claims in federal court would greatly benefit the process for determining compensation for claimants. The TMI accident, which was not an ENO, has resulted in over 150 separate cases against TMI defendants, with over 3,000 claimants, in various state and Federal courts. Many of the issues in these cases are similar. The availability of the provisions for consolidation of claims in the event of any nuclear incident, not just an ENO, would avoid the inefficiencies resulting from duplicative determinations of similar issues in multiple jurisdictions that may occur in the absence of consolidation.

Accordingly, the bill provides the federal district court in which the nuclear incident occurred with subject matter jurisdiction over claims arising from the nuclear incident. Any suit asserting public liability shall be deemed to be an action arising under the Price-Anderson Act, and the substantive law of decision shall be derived from the law of the State in which the incident occurred, in order to satisfy the Article III requirement that federal courts have jurisdiction over cases arising under the Constitution or under the laws of the United States.

CASELOAD MANAGEMENT PANEL

The federal court in which Price-Anderson claims are consolidated may appoint a special caseload management panel to assist in managing cases. This is to provide for additional judicial resources for the adjudication of claims when the claims for public liability would present an unusual burden on the workload of the court.

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

Upon enactment of the bill, the President is required to establish a commission on catastrophic nuclear accidents to study the appropriate means for fully compensating victims of a catastrophic accident for which damages exceed the first two layers of financial protection for accidents at large commercial nuclear power plants or involving waste, or exceed the limit on aggregate liability for accidents for which there is an aggregate limit on liability. Such recommendations would be useful in the event of a catastrophic accident requiring further action by Congress.

SECTION-BY-SECTION ANALYSIS

SECTION 1: SHORT TITLE

The short title of the bill is the "Price-Anderson Amendments Act of 1987".

SECTION 2: FINDINGS AND PURPOSES

This section sets forth Congressional findings and purposes.

SECTION 101: FINANCIAL PROTECTION

Section 101 amends section 170 b. of the Atomic Energy Act of 1954, which establishes the framework for the financial protection requirements for NRC licensees. This section provides for three major changes from current law.

The first change requires the NRC to increase the standard deferred premium which may be charged the licensee of each facility designed for producing substantial amounts of electricity and having a rated capacity of one hundred thousand electrical kilowatts or more. The increase is to be from the current level of $5,000,000 per facility to an amount not more than $60,000,000 per facility, but not more than $12 million in any one year.

The second major change directs the Commission to adjust annually, beginning one year after the date of enactment of this bill, the amount of the maximum deferred premium to reflect the aggregate percentage change in the gross national product deflator during the previous year.

The third change to existing law authorizes the Commission to borrow funds to pay public liability claims if such claims emerge at a rate that exceeds the rate at which the deferred premiums are collected. All such borrowing is subject to approval in advance in appropriation Acts.

The total amount of obligations that may be issued pursuant to this provision for any given nuclear incident (including any interest on such obligations) may not exceed the unpaid balance of deferred premiums to be assessed. All such obligations, including interest, shall be repaid from assessments to be collected as a result of the unpaid balance of deferred premiums to be assessed. This provision is not intended to authorize the Commission to issue obligations to cover defaults by its licensees for the payment of deferred premiums in connection with their financial protection requirements. This section retains the requirements of existing law for the Commission to establish requirements, as necessary, to assure the availability of funds to meet any assessment of deferred premiums.

Consistent with existing law, the NRC is authorized to (1) establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed (to take into account the possibility of multiple accidents); and (2) establish amounts less than the standard deferred premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard.

Also consistent with existing law, the Commission is directed to establish such requirements as are necessary to ensure the availability of funds to meet any assessment of deferred premiums within a reasonable time when due. Specific options made available to the Commission under this provision include the creation of liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee, and consent of the licensee to the automatic revocation of any license.

SECTION 102: NRC INDEMNIFICATION FOR PUBLIC LIABILITY

Section 102 amends section 170 c. of the Atomic Energy Act of 1954, as amended, which sets forth the obligations of the Commission to enter into indemnity agreements with licensees and contains an aggregate limit on such indemnities.

Under current law, the Commission is required to enter into indemnity contracts with those licensees for which it requires financial protection of less than $560,000,000. The aggregate indemnity is limited by statute to $500,000,000. However, this amount must be reduced to the extent that the financial protection required by the Commission of any licensee exceeds $60,000,000. The Commission has interpreted this directive as applying only to those licensees for which it has entered into an agreement of indemnification pursuant to section 170a.

Under the bill, existing law would be unaffected except with respect to those licensees required by the Commission to have and maintain financial protection equal to the maximum amount of liabilty insurance available from private sources (e.g., those utility reactors having a rated capacity equal too or greater than one hundred thousand electrical kilowatts). For these licensees, the Commission would be required to enter into contracts of indemnification covering all public liability arising from a nuclear incident which is in excess of the level of financial protection required of the licensee. Thus, the Commission would be required to indemnify each large commercial reactor for all public liability above the amount of liability covered by the annual retrospective premium system.

This section also authorizes the Commission to enter into contracts of indemnification as outlined above for licenses issued by the Commission during the next thirty years, until August 1, 2017.

SECTION 103: AGGREGATE LIABILITY FOR A SINGLE NUCLEAR INCIDENT

Section 103 amends section 170 e. of the Atomic Energy Act, as amended, which sets forth the aggregate liability of persons indemnified by the Commission for any single nuclear incident.

Under existing law, the aggregate liability, including the costs of investigating and settling claims and defending suits for damage, for any such idemnified licensee is limited to: (1) the sum of $500,000,000 plus the amount of financial protection required; or (2) if the amount of financial protection required exceeds $60,000,000 $560,000,000 or the amount of financial protection required of the licensee, whichever is greater.

This section of existing law also contains the Congressional commitment, in the event of a nuclear incident involving damages in excess of the aggregate liability limits, to "thoroughly review the particular incident and * * * take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude."

The bill maintains existing law, except as it relates to public liability for nuclear incidents covered by the industry retrospective premium system or arising from activities of DOE contractors involving high-level nuclear waste for which indemnification is provided under new section 170 r.

The bill clarifies that for public liability arising from activities of large power reactors that does not exceed the total amount of financial protection provided by the annual retrospective premium system, no additional payments shall be required by or on behalf of person indemnified, if payments are provided in that year pursuant to such retrospective premium plan.

This section also provides that with respect to public liability arising from such commercial activities or indemnified high-level waste activities that does exceed the total amount of financial protection available that would be available for a single nuclear incident under the retrospective premium system: (1) the United States shall be substituted as the party defendant; (2) the execution of any judgments against persons indemnified, other than the United States, for public liability in excess of the amount available under the retrospective premium system is prohibited; and (3) the funds provided pursuant to the procedures in revised section 170 i. shall be the exclusive source of payments for such public liability claims.

Courts are prohibited from awarding punitive damages against any licensee covered by the retrospective premium system or any contractor if the United States would be obligated to make any payments of indemnification as a result of the award of punitive damages.

SECTION 104: ROLE OF THE ATTORNEY GENERAL

Section 104 of the bill amends section 170 h. of the Atomic Energy Act of 1954, as amended, which authorizes the Commission to include in any agreement of indemnification terms deemed appropriate to carry out the purposes of section 170. This provision of existing law also authorizes the Commission to become involved in the settlement of claims, through the Attorney General, when it determines that the United States will probably become obligated to make indemnity payments under such an agreement.

This section of the bill, consistent with the revised nature of the indemnity agreements required for large utility reactors pursuant to section 101 of the bill and for DOE contractors under section 201 of the bill, and consistent with the removal of liability limits for the United States under such agreements, directs that the Attorney General shall be joined as a party defendant where public liability from a nuclear incident involving such indemnified party may exceed the amount of required financial protection.

SECTION 105: CONGRESSIONAL REVIEW

Section 105 of the bill amends section 170 i. of the Atomic Energy Act, which currently requires a report to Congress for any nuclear incident that will probably result in public liability claims in excess of the current maximum limits of liability.

Under this section of the bill, new procedures are established for Congress to determine the proper source of funds for public liability in excess of the maximum amount of financial protection required by the retrospective premium assessments. New procedures are also established for the Congress to review the methods by which such public liability is determined. In the absence of any Congressional action the federal indemnity for such excess liability will be satisfied by the Judgment Appropriation (31 U.S.C. 1304).

Assuming Congress has not previously enacted an alternative compensation plan, as described below, once the damages for public liability as adjudicated by the courts exceed the amount of financial protection that is (or, for nuclear waste accidents, would have been, had the accident occurred at a commercial facility) available under the retrospective premium system, Congress would have 180 days of continuous session to enact a measure to provide the sums of money required to satisfy such excess public liability, or the excess amount would be satisfied out of the Judgment Appropriation. No payments could be made from the Judgment Appropriation prior to the expiration of the 180 day period.

The President is authorized to submit, within thirty days of a court's final judgment, an alternate funding plan to the Congress. Upon the introduction of an alternate funding plan, in the form of a joint resolution which would explicitly reference the alternate plan, the Committee to which such resolution is referred would have 90 days of continuous session to review the plan and determine whether or not to report it to the full Senate or House. If the resolution were not reported within this 90 day period, the Committee would be discharged and the resolution would be placed on the calendar of the Senate or House. The procedures applicable to this resolution are set forth in this section. Floor debate on the resolution would be limited to 100 hours, at which time it would be in order to move passage of the resolution.

Congress could develop its own funding alternative within the 180 day period referred to above, although any such alternative would not be subject to the same expedited procedures. The permissible scope of the Presidential funding plan would be limited to the establishment of a source of funding, for all or part of the judgment that has been rendered by the court, other than the Judgment Appropriation, or the estblishment of a structured settlement by, for example, specifying that the payments shall be spread over a reasonable period of time. These expedited procedures would be inapplicable to resolutions that contained matters other than the timing of payments, the source of payments, and proposed revenue measures.

Section 105 also contains procedure for Congressional consideration of Presidential plans for alternate methods of determining and satisfying public liability claims. If the President determines, after consulting with the NRC or DOE, as appropriate, and the Department of Justice, that: (1) public liability from a single nuclear incident may exceed the maximum amount of financial protection provided under the bill; (2) the Congress should consider an alternate mechanism for the determination and satisfaction of such liability; and (3) the adjudication of any public liability claims for which a final judgment has not yet been rendered should be suspended, then the President would be required to submit such determinations to the Congress.

Upon the submission of such determinations, the President also would be required to submit one or more plans for an alternate method for the determination and satisfaction of public liability from the nuclear incident. Once these communications are submitted to Congress, and after introduction in the form of joint resolutions, procedures parallel to those for the consideration of the Presidential funding plan would apply to the consideration of the Presidential plans for the suspension of the adjudication of claims and the establishment of alternative methods of determining compensation. However, (1) the time for Congressional review of the resolution for the suspension of the adjudication of claims would be limited to 45 days in Committee and 50 hours of floor debate; and (2) the time for review of the suggested alternative would be limited to 150 days in Committee and 100 hours of floor debate.

If Congress were to pass the first resolution, suspending further court adjudication of claims, but did not subsequently pass the second resolution within 180 days of its introduction, then the suspension of further court adjudications would be lifted at the expiration of that period.

SECTION 106: NONPROFIT EDUCATIONAL AND NUCLEAR PHARMACY LICENSEES

Section 106 amends section 170 k. of the Atomic Energy Act of 1954, as amended, which currently requires the NRC to indemnify certain non-profit educational licensees for public liability and limits public liability to the amount of such indemnification.

This section extends by thirty years the requirement that the NRC exempt non-profit educational licensees from the requirements of financial protection, and the authority to enter into agreements with such licensees. As under existing law, such licensees are to be indemnified from public liability in excess of $250,000 arising from nuclear incidents, in the amount of $500,000,000. Aggregate liability is limited to $500,000,000.

The provisions of current law are exteneded to licenses issued for medical and related activities to persons operating nuclear pharmacies or hospital medicine department. It is the Committee's intent that "related activites" include the manufacture of the radiopharmaceuticals provided to persons operating nuclear pharmacies or hospital medicine departments. This section also states that such indemnification agreements would not cover public liability for, or preclude claims arising out of, the administration or misadminstration of radiopharmaceutical dispensed by nuclear pharmacies or nuclear medicine departments of hospitals in the course of diagnosis or therapy.

SECTION 107: WAVIER OF DEFENSES

Section 107 amends section 170 n. of the Atomic Energy Act of 1954, as amended, which requires the waiver of various defense in the event of an extraordinary nuclear occurrence.

The bill generally preserves the provisions of current law regarding various circumstances in which the waiver of defenses is required, and the defenses required to be waived under those circumstances. It clarifies, however, that the waiver of defenses extends to ENO's arising out of activities at various facilities licensed by the NRC to store or possess nuclear materials, other than power reactors, for which the NRC requires financial protection. The waiver also extends to incidents arising from the transportation of nuclear materials to or from such a facility or to or from a nuclear waste storage or disposal facility, or at such a storage or disposal facility.

In addition, this section provides that the waiver of defenses provision related to the statute of limitations be extended from 10 to 30 years.

SECTION 108: JUDICIAL PROCEDURES FOR LIABILITY IN EXCESS OF LIMIT OR FINANCIAL PROTECTION

Section 108 amends section 170 o. of the Atomic Energy Act of 1954, as amended, which sets forth judicial procedures to be followed in the event that public liability from a nuclear incident appears likely to exceed the limits on liability or the amount of financial protection required pursuant to the retrospective rating plan in the absence of such a limit.

The bill preserves the powers of the court under the current section. In addition, however, it directs the court to review the reasonableness of costs associated with the investigation, settlement, prosecution, and defense of claims, and to determine whether the party seeking such costs has: (1) litigated in good faith; (2) avoided unnecessary duplication of effort with that of other parties similarly situated; (3) made frivolous claims or defenses; and (4) attempted to unreasonably delay the prompt settlement or adjudication of such claims.

SECTION 109: REPORT TO CONGRESS

Section 109 amends section 170 p. of the Atomic Energy Act of 1954, as amended, which requires the Commission and DOE to report to the Congress in advance of the expiration of the respective authorities under Price-Anderson on the need to continue or modify the existing system.

This section requires the Commission and DOE to report, prior to the expiration of the authority conferred under this bill, on the need to continue the Price-Anderson system, as amended by this bill, with recommendatons for whatever modifications are deemed appropriate.

SECTION 110: CONFORMING AMENDMENTS

Section 110 makes a number of technical and conforming amendments to various provisions of section 170 of the Atomic Energy Act of 1954, as amended, to reflect previous Congressional decisions to split the functions of the Atomic Energy Commission between the Nuclear Regulatory Commission and the Department of Energy.

SECTION 111: JUDICIAL REVIEW FOR NUCLEAR INCIDENTS

Section 111 amends section 170 n. of the Atomic Energy Act of 1954, as amended, by providing that any action under the Price-Anderson Act may be removed, upon the motion of any defendant, or the Commission or Secretary, to the United States district court in the district in which a nuclear incident has occurred.

This section also allows, under certain conditions, the court of jurisdiction to appoint a special caseload management panel to assign and coordinate cases arising out of a nuclear incident.

SECTION 112: PRESIDENTIAL COMMISSION ON CATASTROPHIC ACCIDENTS

Section 112 adds a new section 170 q. to the Atomic Energy Act of 1954, as amended. This subsection provides for the establishment of a Presidential commission, within 90 days of enactment of the bill, to study means of fully compensating victims of a catastrophic nuclear accident for damages which exceed the maximum amount of financial protection that would be available from the retrospective rating plan. The commission is required to issue a report to Congress at the conclusion of a two year period following the date of enactment of the legislation.

SECTION 113: LIABILITY OF LESSORS

This section adds a new section 170 s. of the Atomic Energy Act of 1954, as amended, to clarify that in a sale-leaseback arrangement, the liability for a nuclear incident remains with the utility-lessee, and not with the investor-lessor, unless the facility at which the incident occurred is in the actual possession and control of such person at the time of the nuclear accident.

SECTION 201: DOE HIGH-LEVEL WASTE CONTRACTORS

Section 201 adds a new section 170 r. to the Atomic Energy Act of 1954, as amended, to authorize the Department of Energy, through August 1, 2017, to indemnify its contractors undertaking activities involving the storage, transportation, or disposal of high-level radioactive waste, spent nuclear fuel, or transuranic waste, where such activities involve the risk of public liability for a nuclear incident. The bill clarifies that for such a waste activities, indemnification is to be provided by DOE rather than by the NRC through its authority to indemnify its licensees or any other authority.

With respect to accidents arising from activities involving waste generated in a commercial nuclear power reactor, funds for compensating public liability in an amount up to the maximum amount that would be available through the retrospective premium system for commercial licensees are to be paid from the Nuclear Waste Fund. The contribution to the Nuclear Waste Fund resulting from defense and other non-commercial Federal contributions are not to be used for payments required as a result of commercial waste accidents.

With respect to accidents arising from activities involving all other waste, funds for compensating public liability up to the maximum amount that would be available through the retrospective premium system for commercial licensees are to be paid from the source as would be used for other contractors indemnified by DOE.

With respect to accidents arising from activities involving both waste generated by commercial reactors and waste generated elsewhere, the Secretary is to determine the proportion of waste from each source and provide funds in the appropriate proportional amount from the Nuclear Waste Fund and the source of funds for all other payments.

Any payments for public liability greater than the amount that would be available through the retrospective premium system, regardless of the source of waste involved, would be made in accordance with the procedures of section 170 i.

SECTIONS 202–205: CONFORMING CHANGES

These sections make conforming changes so that various procedural provisions of the Act apply to accidents arising out of indemnified waste activities as well as to accidents arising out of commercial activities covered by the industry retrospective rating plan.

SECTION 206: CIVIL PENALTIES FOR SAFETY VIOLATIONS

This section, which adds a new section 234A. to the Atomic Energy Act of 1954, as amended, provides for civil monetary penalities for violations of Department of Energy nuclear safety-related rules, regulations, or orders at waste storage or disposal facilities. The scope of the activities for which the penalities may be imposed under this section is limited to those activities for which indemnification agreements have been entered into pursuant to section 170 r. of this bill.

SECTION 207: CRIMINAL PENALTIES FOR SAFETY VIOLATIONS

Section 207 adds a new section 223 c. to the Atomic Energy Act of 1954, as amended, to provide for criminal penalties for knowing and willful violations of the Atomic Energy Act or Department of Energy nuclear safety-related rules, regulations, or orders.

Any director, officer, or employee of a person indemnified under an agreement of indemnification entered into pursuant to section 170 r. who, by act or omission, knowingly and willfully violates or causes to be violated any nuclear safety-related rule, regulation, or order, where such violation results in or, if undetected, would have resulted in a nuclear incident, shall be subject to a fine not to exceed $25,000, imprisonment not to exceed two years, or both. Escalated penalties are provided for subsequent criminal violations.

HEARINGS

The Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works held three days of hearings in the 99th Congress (October 22 and 23, 1985; May 13, 1986) and one day of hearing in the 100th Congress (April 30, 1987) on bills to amend the Price-Anderson Act.

Testimony was received from the members of the Nuclear Regulatory Commission, representatives of the Department of Energy, including the Acting Assistant Secretary and Assistant Secretary for Nuclear Energy and the Director of the Office of Civilian Radioactive Waste Management, representatives from various States and state-sponsored organizations, a representative from an Indian tribe, industry representatives, environmentalists, insurance specialists, and persons with experience in claims for public liability.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

Three rollcall votes were taken during the consideration of this bill by the Committee on Environment and Public Works. Senator Stafford offered an amendment to replace the procedures for claims in excess of the primary and secondary layers of financial protection with the requirement that Congress appropriate the funds required to satisfy such claims. The amendment failed by a vote of 8–8 for lack of a majority. In support of the amendment were Senators Stafford, Moynihan, Chafee, Mitchell, Durenberger, Baucus, Lautenberg, and Mikulski, In opposition were Senators Breaux, Simpson, Burdick, Symms, Reid, Warner, Graham, and Pressler.

Senator Moynihan offered an amendment to require that the Federal Emergency Management Agency provide to the NRC findings and determinations regarding the adequacy of emergency planning and preparedness prior to the issuance by the NRC of an operating license for a nuclear power plant, under criteria for the evaluation of emergency plans and preparedness at least as protective of the public health and safety as those in effect on August 1, 1987. The amendment failed by a vote of 8–8 for lack of a majority. In support of the amendment were Senators Moynihan, Stafford, Mitchell, Baucus, Lautenberg, Mikulski, Reid, and Graham. In opposition were Senators Burdick, Breaux, Chafee, Simpson, Symms, Durenberger, Warner, and Pressler.

The Committee ordered the bill to be reported by a unanimous rollcall vote.

EVALUATION OF REGULATORY IMPACT

In accordance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill:

The bill amends and extends the basic indemnification and compensation system of the current Price-Anderson Act. There is no direct regulatory impact from the extension of the provisions of current law.

The bill amends current law by requiring the NRC to increase the maximum retrospective premium that may be charged following a nuclear incident from $5,000,000 to $60,000,000. The bill further requires the NRC to adjust annually the maximum retrospective premium to reflect the aggregate change in the gross national product deflator during the previous year. This increase would result in increased costs to licensees of large commercial nuclear power plants only in the extremely unlikely event of a nuclear accident with damages greater than the limit of liability under existing law, which is now approximately $175,000,000.

Current law is also amended by extending the minimum statute of limitations for certain extraordinary nuclear occurrences—those covered by the retrospective premium system and those incidents involving nuclear wastes—to thirty years from the date of the accident. A State would not be allowed to impose a shorter statute of limitations.

Section 8 expands the scope of coverage to include NRC licenses issued to persons operating pharmacies and to hospital nuclear medicine departments. The NRC has licensed 1800 medical institutions, 500 private practitioners, 20 mobile nuclear medicine services, 300 teletherapy services, 100 in vitro blood testing laboratories, 10 radiopharmaceuticals manufacturers, and 10 sealed source manufacturers that possibly would be affected by this section. Upon execution of an indemnity agreement, a licensee would not incur any additional costs or requirements.

The bill authorizes the imposition of civil and criminal penalties against indemnified contractors in the high-level waste program for violations of DOE safety-related rules, regulations, or orders, and criminal penalties for the intentional violation of requirements of the Atomic Energy Act or DOE safety-related rules, regulations, or orders. The bill does not provide DOE with any new authority regarding the issuance of such rules, regulations, or orders.

The civil and criminal penalty provisions should not impose any additional regulatory burdens upon contractors involved in the high-level waste program. Contractors of the Federal government are expected to comply with all applicable Federal laws, rules, regulations, and orders, regardless of the type of sanction imposed for violations thereof.

The bill creates a Presidential commission to study means of fully compensating victims of a catastrophic nuclear accident where public liability exceeds the maximum amount of financial protection required of licensees covered by the retrospective rating plan, or the limit on aggregate liability, as appropriate. The commission is to issue a report to Congress two years after the date of enactment of this legislation. The commission has the authority to recommend additional regulatory requirements, but does not have authority to impose any additional regulatory requirements.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 28, 1987.

Hon. QUENTIN N. BURDICK,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the Price-Anderson Amendments Act of 1987, as ordered reported by the Senate Committee on Environment and Public Works, August 4, 1987. This bill would increase the government's potential financial liability in the event of nuclear accident involving federal nuclear waste contractors and certain other types of nuclear accidents. Because there is no basis for predicting the number and magnitude of such incidents, CBO cannot estimate the cost of the increased liability. The bill also raises the maximum liability of operators of commercial nuclear powerplants, thus decreasing the likelihood that an accident involving such a facility would exceed the liability limit and possibly necessitate government action. However, the bill makes the federal government liable for any claims that exceed the insurance coverage for commercial power plants.

CBO estimates that the bill's provision for a new Presidential Commission on Catastrophic Nuclear Accidents would cost approximately $500,000 per year, for fiscal years 1988 and 1989. No significant costs to the federal government would result from other provisions of the bill.

Bill purpose

The bill extends and revises the Price-Anderson Act, which governs the liability and indemnification of federal licensees and contractors in the event of a nuclear accident. Under this law, the Nuclear Regulatory Commission (NRC) regulates and indemnifies licensees, and the Department of Energy (DOE) indemnifies its contractors. The bill would extend NRC's indemnification authority for 30 years, until August 1, 2017. In addition, the bill authorizes DOE indemnification of nuclear waste contractors until August 1, 2017.

Under existing federal indemnification agreements, utilities are required to carry the maximum available private liability insurance, currently $160 million per reactor. For nuclear accident damages beyond this "primary layer" of compensation, each licensed reactor may be assessed a charge of $5 million per accident. The law calls these charges "deferred premiums"; they would not be assessed until an accident occurs. With 111 reactors currently licensed by the NRC, this "secondary layer" of nuclear accident insurance totals $555 million, for a total commercial liability of $715 million (under current law). Federal liability for nuclear accidents caused by DOE contractors is currently limited to $500 million. DOE's authority to indemnify its contractors expired on August 1, 1987.

The bill raises the maximum financial liability for a nuclear accident involving commercial power plants from $715 million to an estimated $6.8 billion per incident. The bill sets the liability limit according to the amount of financial protection that the NRC requires commercial licensees to maintain from primary liability insurance (currently $160 million), and from deferred premiums levied on all other operating plants (up to $60 million per reactor, as determined by the NRC). In general, the aggregate deferred premium of $60 million per reactor, for each nuclear accident, is to be paid at a rate of no more than $12 million per year. The bill provides the NRC with authority to assess certain facilities annual deferred premiums less than the standard deferred premium of $12 million per year under special circumstances.

The estimated $6.8 billion limit established by the bill would be increased over time, because the bill requires the NRC to make annual inflation adjustments to the aggregate deferred premium. CBO estimates that the aggregate deferred premium would rise from $60 million per plant to approximately $73 million per plant by the end of fiscal year 1992.

The bill directs the NRC to request an appropriation to borrow from the Treasury in order to meet any nuclear accident claims for which the commission is liable. For example, the NRC could borrow funds to meet a single-year demand for accident claims when such demand exceeds the annual receipts from deferred premium payments of $12 million per reactor. Funds borrowed by the NRC to meet claim requirements are limited to amounts that can be repaid to the Treasury, with interest, from future deferred premiums.

Special procedures are included in the bill for Congressional action on claims involving commercial power plants that exceed the above limits. Specifically, the government is made liable for nuclear accident claims that exceed the limited liability of commercial power plant licensees. The bill establishes rules and procedures for Congressional action to compensate accident victims for claims that exceed the commercial liability level. Claims that exceed the commercial liability level would be paid from a permanent, indefinite appropriation known as the Judgment Appropriation (31 U.S. Code 1304), or by an alternate funding plan approved by the Congress.

The Environment Committee's bill extends DOE's indemnification authority to contractors that are involved in nuclear waste activities. The bill does not limit the government's liability for any accidents involving nuclear waste contractors. Claims related to the Nuclear Waste Fund are to be paid directly from the fund, until claims exceed the maximum amount of financial protection required for commercial power plant licensees. Claims beyond the commercial limit ($6.8 billion for the current number of commercial reactors) could be paid by using the Judgment Appropriation, or from other sources, as the Congress deems appropriate.

The bill also authorizes DOE to assess civil penalties, up to $100,000 per day, again nuclear waste contractors who violate any rule, regulation or order related to nuclear safety, as prescribed by the Secretary of Energy.

Budget impact

The increase in the liability for accidents involving commercial plants would not directly affect the federal government's financial liability, because commercial licensees would be ultimately responsible for all accident claims up to the new liability limit. However, the government would be required to take action in the event of an accident with claims exceeding the licensees' liability. The increase in the commercial liability limit makes it less likely that such government involvement would occur in the event of a major nuclear accident. On the other hand, because the government fully indemnifies federal contractors involved in nuclear waste activities, the increase in liability for incidents involving these contractors would be completely borne by the federal government. The liability and indemnification of other licensees would remain at current levels ($500 million in most cases).

The provisions affecting the government's financial liability would not increase federal spending in fiscal years 1987 through 1992 unless a nuclear incident involving federal indemnification occurs in those years. Enactment of the bill would result in unlimited government liability for accidents caused by DOE nuclear waste contractors, and for commercial nuclear accidents that exceed the $6.8 billion limit on commercial financial liability.

The Environment Committee's bill requires that the President establish a Commission on Catastrophic Nuclear Accidents within 90 days after enactment of the bill. The commission shall consist of 7 to 11 members who must conduct a study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the aggregate liability specified by the bill. A final report containing the commission's recommendations must be submitted to the Congress within two years of enactment of the bill. The estimated cost of establishing this Presidential commission is $500,000 per year, for fiscal years 1988 and 1989. The commission shall terminate two months after the required final report is submitted.

Other provisions in the bill are expected to have no significant impact on federal outlays.

No costs would be incurred by state or local governments as a result of enactment of this bill.

On June 8, 1987, CBO prepared an estimate of the budget impact of S. 748, the Price-Anderson Act Amendments Act of 1987, as ordered reported by the Senate Committee on Energy and Natural Resources, May 20, 1987. S. 748 extends and revises DOE's indemnification authority for federal contractors, but it does not contain any provisions that apply to operators of commercial nuclear reactors. S. 748 provides for indemnification of all DOE contractors, and sets a federal liability limit of $6 billion per nuclear accident, to be adjusted over time for inflation. In contrast, the Environment Committee's bill would impose no limit on the government's liability for accidents involving nuclear waste activities.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman.

PART I. THE ATOMIC ENERGY ACT OF 1954 AS AMENDED

AN ACT To amend the Atomic Energy Act of 1946, as amended, and for other purposes

* * * * * *

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.

* * * * * *

[b. The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (1) the cost and terms of private insurance, (2) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of this Act, include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such financial protection: *And provided further*, That the standard deferred premium which may be charged following any nuclear incident under such a plan shall be not less than $2,000,000 nor more than $5,000,000 for each facility required to maintain the maximum amount of financial protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard. The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.]

b. (1) The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as—

(A) the cost and terms of private insurance;

(B) the type, size, and location of the licensed activity and other factors pertaining to the hazard; and

(C) the nature and purpose of the licensed activity.

For facilities designed for producing substantial amounts of electricity and having a rated capacity of one hundred thousand electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe.

(2)(A) In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of the Price-Anderson Act Amendments of 1987, include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: Provided, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such financial protection. The standard deferred premium which may be charged following any nuclear incident under such a plan shall be not more than $60,000,000 (but not more than $12,000,000 in any one year) for each facility required to maintain the maximum amount of financial protection. The Commission shall annually adjust, beginning one year after the date of enactment of the Price-Anderson Act Amendments of 1987, the amount of the maximum standard deferred premium required pursuant to this subparagraph, to reflect the aggregate percentage change in the gross national product deflator.

(B) The amount which may be charged a licensee under the industry retrospective rating plan required pursuant to subparagraph (A) of this paragraph following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims

and costs arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard.

(C) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

(D)(i) If the aggregate annual deferred premiums assessed pursuant to paragraph (2)(A) of this subsection for a nuclear incident are insufficient to indemnify public liability claims resulting from such incident in a timely manner as such public liability claims arise, the Commission is authorized to issue, and shall request the Congress to appropriate sufficient funds for issuing, obligations to the Secretary of the Treasury for the purpose of compensating such claims, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(ii) The aggregate amount of such obligations, including any interest to be paid on such obligations, shall not exceed the balance of deferred premiums to be assessed pursuant to paragraph (2)(A) of this subsection for such nuclear incident.

(iii) With respect to liability for a nuclear incident covered by an industry retrospective rating plan required pursuant to this subsection, the aggregate payments in any single year by or on behalf of persons indemnified shall not be required to exceed the amount of financial protection provided in that year pursuant to paragraph (2)(A) of this subsection.

(iv) The funds provided by financial protection pursuant to this subsection in any year by or on behalf of such persons indemnified and, where appropriate, the funds provided as a result of the issuance of obligations pursuant to clause (i) of this paragraph, shall be the exclusive source of payments for public liability claims where such liability does not exceed the amount of financial protection required under section 170 b.

(v) The total of obligations issued pursuant to clause (i) of this subparagraph for any given nuclear incident, including any interest to be paid on such obligations, shall not exceed amounts provided in appropriation Acts.

(vi) Redemption of obligations issued pursuant to clause (i) of this subparagraph, including any interest to be paid on such obligations, shall be made by the Commission from the balance of deferred premiums to be assessed pursuant to paragraph (2)(A) of this subsection as a result of the nuclear incident for which such obligations were issued.

(vii) Obligations issued pursuant to clause (i) of this subparagraph shall bear interest at a rate determined by the Secretary of the Treasury, which shall not be less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

[c. The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 1987, for which it requires financial protection of less than $560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 excluding costs of investigating and settling claims and defending suits for damage: *Provided, however,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity with respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1987.**]**

c. (1) The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 2017, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee as follows:

(A) Except for those licensees covered by subparagraph (B), the aggregate for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000: Provided, however, That this amount of indemnity shall be reduced by the

amount that the financial protection required shall exceed $60,000,000.

(B) With respect to licenses issued between August 30, 1954, and August 1, 2017, for which the Commission requires such licensee to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from all public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee.

(2) Any contract of indemnification entered into under paragraph (1) of this subsection shall cover public liability arising out of or in connection with the licensed activity, including the costs of investigating and settling claims and defending suits for damages.

(3) With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2017, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2017.

* * * * * * *

e. *(1) Except as provided in paragraph (2),* the aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (1) the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor or (2) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever amount is greater: *Provided,* That in the event of a nuclear incident involving damages in excess of that amount of aggregate liability, the Congress will throughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: *And provided further,* That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.

(2)(A)(i) With respect to public liability for one or more nuclear incidents covered by an industry retrospective rating plan required by section 170 b. (2) which is not in excess of the amount of financial protection required under section 170 b., the aggregate payments in any single year by or on behalf of persons indemnified shall not exceed the amount of financial protection provided in that year pursuant to section 170 b. (2). The funds provided by financial protection pursuant to section 170 b. in any year by or on behalf of such persons indemnified and, where appropriate, the funds provided as a result of the issuance of obligations pursuant to section 170b.(2)(D) shall be the exclusive source of payments for public liability claims.

(ii) With respect to public liability for one or more nuclear incidents that is covered by an industry retrospective rating plan re-

quired by section 170 b. (2) or that arises from activities for which the Secretary has entered into agreements of indemnification under section 170 r., and which is in excess of the amount of financial protection required under section 170 b.—

(I) The United States shall be deemed to be the liable party with respect to all such public liability of all indemnified persons and shall assume the rights and liabilities of such persons, including the obligation to investigate and defend claims and settle suits for damages, and shall be subject only to such defenses as are applicable to such indemnified persons;

(II) Execution of judgments with respect to such public liability against any person indemnified, other than the United States, is prohibited; and

(III) Satisfaction of any such judgment shall be made exclusively in accordance with the provisions of section 170 i.: Provided, however, That no court may award exemplary or punitive damages under State law in any action against a person on behalf of whom the United States would thereby become obligated to make payments under an agreement of indemnification covering such incident.

(B) With respect to nuclear incidents involving licensees other than those specified in subsection 170 e. (2)(A), the aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (i) the sum of $500,000,000 together with the amount of financial protection required of the licensee, or (ii) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever amount is greater.

(3)(A) In the event of a nuclear incident involving licensees covered by an industry retrospective rating plan required under section 170 b. for which damages exceed the amount of financial protection required under section 170 b., the Congress will thoroughly review the particular incident and will take whatever action is necessary, including approval of appropriate funding or compensation plans under section 170 i., to compensate the public in full for all public liability resulting from a disaster of such magnitude.

(B) In the event of a nuclear incident involving licensees other than those specified in section 170 e.(2)(A) for which damages exceed the amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is necessary to compensate the public in full for the consequences resulting from a disaster of such magnitude.

f. The Commission *or the Secretary, as appropriate,* is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided,* That the Commission *or the Secretary, as appropriate,* is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of $60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The

Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

g. In administering the provisions of this section, the Commission, *or the Secretary, as appropriate,* shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission *or the Secretary, as appropriate,* may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Status, as amended, upon a showing by the Commission, *or the Secretary, as appropriate,* that advertising is not reasonably practicable and advance payments may be made.

h. *(1)* The agreement of indemnification may contain such terms as the Commission, *or the Secretary, as appropriate,* deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission, *or the Secretary, as appropriate,* makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission, *or the Secretary, as appropriate,* shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission *or the Secretary, as appropriate,* shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

(2) In the event that public liability arising out of a nuclear incident that is covered by an industry retrospective rating plan, or that is covered by an agreement of indemnification under section 170 r., may exceed the amount of financial protection required under section 170 b., the Attorney General shall be joined as a party defendant in any action involving public liability arising out of such incident. The Attorney General may, and where required under 170 e. (2)(A)(ii) shall, appear on behalf of persons indemnified, in accordance with the provisions of 170 e. (2)(A)(ii), to represent the interests of the United States in such action.

[i. After any nuclear incident which will probably require payments by the United States under this section or which will probably result in public liability claims in excess of $560,000,000, the Commission shall make a survey of the causes and extent of damages which shall forthwith be reported to the Joint Committee, to the Congressmen of the affected districts, and to the Senators of the affected States, and, except for information which would cause serious damage to the national defense of the United States, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the

Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.]

i. (1)(A) With respect to public liability arising out of a nuclear incident that is covered by an industry retrospective rating plan, or that is covered by an indemnity agreement entered into pursuant to section 170 r., or that is covered by an indemnity agreement entered into pursuant to section 170 r., public liability which is in excess of the amount of financial protection available under section 170 b. shall be satisfied from, and in accordance with the procedures of, the Judgment Appropriation (31 U.S.C. 1304), unless Congress has established, within one hundred and eighty days of continuous session of Congress, an alternate funding plan or plans, including but not limited to approval of an alternate funding plan or plans submitted by the President pursuant to this paragraph. Notwithstanding any other provision of law, no payments for public liability which is in excess of the amount of financial protection available under section 170 b. shall be made from the Judgment Appropriation for a period of one hundred and eighty days of continuous session of Congress following the rendering of any final judgment that results in such public liability exceeding the amount of financial protection available under section 170 b.

(B) In the event that public liability arising out of a nuclear incident that is covered by an industry retrospective rating plan, or that is covered by an indemnity agreement entered into pursuant to section 170 r., or that is covered by an indemnity agreement entered into pursuant to section 170 r., exceeds the amount of financial protection available under section 170 b., the President is authorized to submit one or more alternate funding plans to Congress. Each such plan, if submitted, shall be submitted within thirty calendar days following the rendering of a final judgment that results in public liability exceeding the amount of financial protection available under section 170 b. Any alternate funding plan transmitted to Congress shall contain such additional legislative authorities as may be necessary, providing that such plan may only contain provisions related to the timing of payments, the source or sources of funds to be utilized to satisfy such final judgments, and proposed revenue measures. Any alternate funding plan transmitted to the Congress shall bear an identification number and shall be transmitted to the Speaker of the House and the President pro tempore of the Senate on the same day and to each House while it is in session.

(C) If an alternate funding plan has been submitted to the Congress under (B), such plan shall be disapproved unless, during the first period of one hundred and eighty days of continuous session of the Congress following the rendering of a final judgment that results in public liability exceeding the amount of financial protection available under section 170 b., the Congress passes a resolution of approval in accordance with this paragraph approving such plan, and such resolution thereafter becomes law, in which case the alternate funding plan shall be deemed to be approved.

(D) For purposes of this paragraph, the term "resolution of approval" means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That the Congress hereby approves the funding plan numbered   submitted to the Congress on   19 .", the blank spaces being

appropriately filled; but does not include a resolution which specifies more than one funding plan.

(E) For the purpose of paragraph (1) of this subsection—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the calendar period.

(F) PROCEDURES APPLICABLE TO THE SENATE.—The provisions of this paragraph are enacted by the Congress—

(i) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a resolution of approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(G) Upon introduction, a resolution of approval shall be referred to the appropriate committee of the Senate by the President of the Senate, and all such resolutions with respect to the same alternate funding plan shall be referred to the same committee. Upon the expiration of ninety days of continuous session of Congress after introduction of the first resolution of approval with respect to such alternate funding plan, the committee to which such resolution was referred shall make its recommendations to the Senate.

(H) If the committee to which is referred a resolution of approval introduced under subparagraph (G) of this paragraph has not reported such resolution at the end of ninety days of continous session of Congress after introduction of such resolution, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

(I) When the committee to which a resolution of approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described in subparagraph (D) of this paragraph, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

(J)(i) Debate on a resolution of approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than one hundred hours, which shall be divided equally between Members favoring and Members opposing such resolution. Such motion shall not be subject to amendment, to a motion

to postpone, or to a motion to proceed to the consideration of other business, and a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

(ii) Immediately following the conclusion of the debate on a resolution of approval, and a single quorum call at the conclusion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

(iii) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of approval shall be decided without debate.

(K) If the Senate receives from the House a resolution of approval with respect to any alternate funding plan, then the following procedures shall apply:

(i) The resolution of the House with respect to such plan shall not be referred to a committee.

(ii) With respect to the resolution of the Senate with respect to such plan—

(I) the procedure with respect to that or other resolutions of the Senate with respect to such plan shall be the same as if no resolution from the House with respect to such plan had been received; but

(II) on any vote on final passage of a resolution of the Senate with respect to such plan, a resolution from the House with respect to such plan where the text is identical shall be automatically substituted for the resolution of the Senate.

(L) PROCEDURES APPLICABLE TO THE HOUSE OF REPRESENTATIVES.—The provisions of this paragraph are enacted by the Congress—

(i) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

(ii) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(M) Resolutions of approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(N) Upon the expiration of ninety days of continuous session after the introduction of the first resolution of approval with respect to any alternate funding plan, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(O) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of approval after it has

been on the appropriate calendar for five legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for one hundred hours of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(P) If the House receives from the Senate a resolution of approval with respect to any alternate funding plan, then the following procedures shall apply:

(i) The resolution of the Senate with respect to such plan shall not be referred to a committee.

(ii) With respect to the resolution of the House with respect to such plan—

(I) the procedure with respect to that or other resolutions of the House with respect to such plan shall be the same as if no resolution from the Senate with respect to such plan had been received; but

(II) on any vote on final passage of a resolution of the House with respect to such plan, a resolution from the Senate with respect to such plan where the text is identical shall be automatically substituted for the resolution of the House.

(2)(A) Where the President determines, after considering the views of the appropriate court of jurisdiction and after consulting with the Nuclear Regulatory Commission or Department of Energy, as appropriate, and the Department of Justice, that—

(i) public liability arising out of a nuclear incident that is covered by an industry retrospective rating plan or that is covered by an indemnity agreement entered into pursuant to section 170 r., may exceed the amount of financial protection available under section 170 b.;

(ii) the adjudication of any public liability claims for which a final judgment has not yet been rendered should be suspended; and

(iii) an alternate mechanism should be considered by the Congress for the determination and satisfaction of such claims,

the President shall promptly notify the Congress of such findings. Any findings by the President shall be final and conclusive, and no other official, except as provided in this paragraph, or any court shall have power or jurisdiction to review any such determination.

(B) In the event that the President submits to Congress a finding under subparagraph (A) of this paragraph, the President shall, at the same time, submit one or more plans setting forth an alternate mechanism for the determination and full satisfaction of public liability for such incident. Each such plan, if submitted, shall contain such additional legislative authorities as may be necessary. Each plan transmitted to the Congress pursuant to this subparagraph, and the findings of the President submitted to the Congress pursuant to subparagraph (A) of this paragraph shall each bear an

identification number and shall be transmitted to the Speaker of the House and the President pro tempore of the Senate on the same day and to each House while it is in session.

(C) Each plan that has been submitted to the Congress under subparagraph (B) of this paragraph, or the findings submitted under subparagraph (A) of this paragraph, shall be disapproved unless the Congress passes a resolution of approval in accordance with this paragraph and such resolution thereafter becomes law, in which case they shall be deemed to be approved: Provided, however, That any resolution of approval defined in clause (D)(i) of this paragraph shall, if enacted pursuant to this paragraph, be effective for a period of one hundred and eighty days of continuous session after the introduction of such resolution, unless Congress specifically provides otherwise.

(D) For purposes of this subparagraph, the term "resolution of approval" means—

(i) with respect to the findings submitted pursuant to subparagraph (A) of this paragraph, a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That the Congress hereby approves the findings of the President numbered   submitted to the Congress on   , 19   , and hereby suspends the adjudication of all public liability claims for which a final judgment has not yet been rendered", the blank spaces being appropriately filled (hereinafter referred to in this paragraph as the "findings resolution"); and

(ii) with respect to each plan submitted pursuant to subparagraph (B) of this paragraph, a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That the Congress hereby approves the plan of the President numbered   submitted to the Congress on   , 19   .", the blank spaces being appropriately filled; but does not include a resolution which specifies more than one plan (hereinafter referred to in this paragraph as the "compensation resolution").

(E) For the purpose of this paragraph of this subsection—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the calendar period.

(F) PROCEDURES APPLICABLE TO THE SENATE.—The provisions of this paragraph are enacted by the Congress—

(i) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a resolution of approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(G) Upon introduction, a resolution of approval shall be referred to the appropriate committee of the Senate by the President of the Senate, and all such resolutions with respect to the same alternate subject shall be referred to the same committee.

(i) With respect to the findings resolution, the committee to which such resolution was referred shall make its recommendations to the Senate upon the expiration of forty-five days of continuous session of Congress after introduction of the first resolution of approval.

(ii) With respect to the compensation resolution, the committee to which such resolution was referred shall make its recommendations to the Senate upon the expiration of one hundred and fifty days of continuous session of Congress after introduction of the first resolution of approval.

(H) If the committee to which is referred a resolution of approval introduced under subparagraph (G) of this paragraph has not reported such resolution at the end of the time specified in the appropriate clause of such subparagraph, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

(I) When the committee to which a resolution of approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described from further consideration of, a resolution described in subparagraph (D), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

(J)(i) Debate on a resolution of approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than:

(I) Fifty hours with respect to the findings resolution; or

(II) One hundred hours with respect to the compensation resolution;

which time shall be divided equally between Members favoring and Members opposing such resolution. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business, and a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

(ii) Immediately following the conclusion of the debate on a resolution of approval, and a single quorum call at the conclusion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

(iii) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of approval shall be decided without debate.

(K) If the Senate receives from the House a findings resolution or compensation resolution, then the following procedures shall apply:

(i) The resolution of the House shall not be referred to a committee.

(ii) With respect to the corresponding resolution of the Senate—

(I) the procedure with respect to that or other corresponding resolutions of the Senate shall be the same as if no corresponding resolution from the House with respect to such issue had been received; but

(II) on any vote on final passage of a resolution of the Senate, a corresponding resolution from the House, where the text is identical, shall be automatically substituted for the resolution of the Senate.

(L) PROCEDURES APPLICABLE TO THE HOUSE OF REPRESENTATIVES.—The provisions of this section are enacted by the Congress—

(i) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

(ii) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(M) Resolutions of approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(N) Upon the expiration of—

(i) Forty-five calendar days of continuous session after the introduction of a finding resolution; or

(ii) One hundred and fifty calendar days of continuous session after the introduction of a compensation resolution;

each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(O) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of approval after it has been on the appropriate calendar for five legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for—

(i) Fifty hours of debate with respect to a findings resolution; or

(ii) One hundred hours of debate with respect to a compensation resolution;

to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(P) If the House receives from the Senate a findings resolution or a compensation resolution, then the following procedures shall apply:

(i) The resolution of the Senate shall not be referred to a committee.

(ii) With respect to the corresponding resolution of the House—

(I) the procedure with respect to that or other corresponding resolutions of the House shall be the same as if no such corresponding resolution from the Senate had been received; but

(II) on any vote on final passage of a resolution of the House, a corresponding resolution from the Senate where the text is identical shall be automatically substituted for the resolution of the House.

(3) The Congress expressly reserves the right to provide that any claimants' exclusive remedy for public liability arising out of a nuclear incident shall be by administrative procedures, and to establish such procedures.

j. In administering the provisions of this section, the Commission *or the Secretary, as appropriate*, may make contracts in advance of appropriations and incur obligations without regard to section 3679 of the Revised Statutes, as amended.

[k. With respect to any license issued pursuant to section 53, 63, 81, 104a., or 104c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection 170a. With respect to licenses issued between August 30, 1954, and August 1, 1987, for which the Commission grants such exemption:

[(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, excluding cost of investigating and settling claims and defending suits for damage;

[(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

[(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facilities for which a construction permit is issued between August 30, 1954, and August 1, 1987, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1987.]

(k) EXEMPTION FROM REQUIREMENTS OF FINANCIAL PROTECTION.—

(1) With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. for the conduct of—

(A) educational activities to a person found by the Commission to be a nonprofit educational institution, or

(B) medical and related activities to a person operating nuclear pharmacies or hospital nuclear medicine departments,

the Commission shall exempt such licensee from the financial protection requirement of subsection 170 a.

(2) With respect to licenses issued pursuant to paragraph (1) of this subsection between August 30, 1954, and August 1, 2017, for which the Commission grants such exemption:

(A) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, excluding cost of investigating and settling claims and defending suits for damage;

(B) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(C) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

(3) No contract of indemnification entered into by the Commission pursuant to paragraph (2) of this subsection for the conduct of activities described in subparagraph (1)(B) of this subsection shall provide indemnification of public liability for, or preclude claims arising out of, the administration or misadministration of radio-pharmaceuticals dispensed by nuclear pharmacies or nuclear medicine departments of hospitals or clinics in the course of diagnosis or therapy.

(4) With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2017, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2017.

(5) Any licensee may waive an exemption to which it is entitled under this subsection.

* * * * * * *

m. The Commission, *or the Secretary, as appropriate,* is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission, *or the Secretary, as appropriate,* and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission *or the Secretary, as appropriate,* shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

n. (1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

(a) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, or

(b) arises out of or results from or occurs in the course of transportation of source material, by-product material or special nuclear material to or from a production or utilization facility, or

(c) during the course of the contract activity arises out of or results from the possession, operation, or use by **[**a Commission**]** *a Department of Energy* contractor or subcontractor of a device utilizing special nuclear material or by-product material, *or*

(d) arises out of or results from or occurs in the course of the construction, possession, or operation of any facility licensed under section 53, 63, or 81 of this Act, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection pursuant to subsection 170 a.,

(e) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81 of this Act, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection pursuant to subsection 170 a., or

(f) arises out of or results from or occurs in the course of activities undertaken by the Secretary, including activities undertaken by contract, in connection with the storage or disposal of high-level radioactive waste, spent nuclear fuel, or transuranic

> *waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility.*

the Commission *or the Secretary, as appropriate,* may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than twenty years after the date of the nuclear incident**[**.**]** *for indemnity agreements entered into pursuant to subsection 170 d. and thirty years for indemnity agreements entered into pursuant to subsection 170 c. or pursuant to subsection 170 r.* The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforcible in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection 170 e.

(2) With respect to any public liability action arising out of or resulting from **[**an extraordinary nuclear occurrence,**]** *a nuclear incident,* the United States district court *(including any such action pending on the date of the enactment of the Price-Anderson Act Amendments of 1987)* in the district where **[**the extraordinary nuclear occurrence**]** the nuclear incident takes place, or in the case of **[**an extraordinary nuclear occurrence**]** *a nuclear incident* taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission, *or the Secretary, as appropriate,* any such action pending in any State court or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. *In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be*

filed within the period provided in section 1446 of title 28, United States Code, or within the thirty-day period beginning on the date of the enactment of the Price-Anderson Act Amendments of 1987, whichever occurs later.

(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the "management panel") to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

(i) the United States district court having jurisdiction under paragraph (2) determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b.; or

(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases rising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel—

(i) to consolidate related or similar claims for hearing or trial;

(ii) to establish priorities for the handling of different classes of cases;

(iii) to assign cases to a particular judge or special master;

(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

o. Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under subsection 170 e. *or the maximum amount of financial protection under section 170 b.:*

(1) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(2) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (3) of this subsection (o); and

(3) The Commission, *or the Secretary, as appropriate,* shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission, *or the Secretary, as appropriate,* any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.

[(4) the Commission shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee a supplement to the report prepared in accordance with subsection 170 i. of this Act setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.**]**

(4) The court shall review the costs associated with investigating, settling, prosecuting, and defending claims to determine whether such costs are reasonable and equitable and to determine whether the party seeking such costs has—

(A) litigated in good faith;

(B) avoided unnecessary duplication of effort with that of other parties similarly situated;

(C) made frivolous claims or defenses; and

(D) attempted to unreasonably delay the prompt settlement or adjudication of such claims.

p. The Commission shall submit to the Congress by August 1, **[**1983,**]** *2013,* a detailed report concerning the need for continuation of modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

q. Presidential Commission on Catastrophic Nuclear Accidents.—(1) Not later than ninety days after the date of the enactment of the Price-Anderson Act Amendments of 1987, the President shall establish a commission (in this subsection referred to as the "study commission") in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the maximum amount of financial protection required of licensees covered by an industry retrospective rating plan required by subsection b., or the amount of aggregate public liability under subsection e., as appropriate.

(2)(A) The study commission shall consist of not less than seven and not more than eleven members, who—

(i) shall be appointed by the President; and

(ii) shall be representative of a broad range of views and interests.

(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate one of the members of the study commission as chairperson, to serve at the pleasure of the President.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the maximum amount of financial protection required of licensees covered by an industry retrospective rating plan required by subsection b., or the amount of aggregate public liability under subsection e., as appropriate, and shall submit to the Congress a final report setting forth—

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions fo the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice, or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate now or hereafter prescribed by law for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the two-year period beginning on the date of the enactment of the Price-Anderson Act Amendments of 1987.

(6) The study commission shall terminate upon the expiration of the two-month period beginning on the date on which the final report required in paragraph (3) is submitted.

r. (1)(A) In addition to any other authority the Secretary of the Department of Energy (hereinafter in this section referred to as the Secretary) may have, the Secretary is authorized until August 1, 2017, to enter into agreements of indemnification with the contractors of the Secretary for such activities as the Secretary is authorized to undertake, pursuant to this Act or any other law, involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to or from a storage or disposal site or facility, and the construction and operation of any such site or facility, under the risk of public liability for a nuclear incident. For all such activities, the authority conferred upon the Secretary pursuant to this subsection shall be the exclusive means of indemnification under this section.

(B) For the purposes of compensating public liability claims, as defined in section 11 w. of this Act, arising out of activities involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste produced as a result of the generation of electricity in a civilian nuclear power reactor, including the transportation of such materials to a storage or disposal site or fa-

cility, and the construction and operation of any such site or facility, the Secretary shall make available such funds as may be necessary, in an amount not to exceed the maximum amount of financial protection required of licensees pursuant to subsection 170 a., from the Nuclear Waste Fund established pursuant to section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222). Funds deposited in the Nuclear Waste Fund for the disposal of high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code, shall not be made available or used for such payments.

(C) Public liability claims arising out of activities involving the storage or disposal of all other spent nuclear fuel, high-level radioactive waste, or transuranic waste not specified in subparagraph (B), including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, shall be compensated in accordance with the provisions of this Act, and from the same source of funds applicable to all other contractors indemnified pursuant to this subsection.

(D)(i) In the event of a nuclear incident that arises out of or results from or occurs in the course of activities undertaken by the Secretary in connection with the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, the Secretary shall determine the extent to which such incident involves materials produced as a result of the generation of electricity in a civilian nuclear power reactor, or materials resulting from other activities, or both, and based upon such determination, render a decision as to the appropriate source of funds, in accordance with subparagraphs (B) and (C), to be used in compensating public liability claims.

(ii) The funds to be used to compensate public liability claims pursuant to this subparagraph shall be provided in a manner and in such amounts as are appropriate to ensure that the funds necessary to compensate such claims are shared on a pro rata basis, in accordance with the determination rendered pursuant to subparagraph (i). Within ninety days of the date of enactment of the Price-Anderson Act Amendments of 1987, the Secretary shall promulgate standards and regulations for making the determinations required under this subparagraph.

(2) In agreements of indemnification entered into pursuant to subsection 170 r. (1), the Secretary may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the aggregate public liability of the persons indemnified for each nuclear incident, including costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident.

(3) Any payments required pursuant to an agreement of indemnification entered into under this subsection in excess of the level of financial protection required of the licensees covered by an industry retrospective rating plan required under subsection 170 b. shall be made in accordance with the provisions of subsection 170 i.

(4) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

s. Limitation on Liability of Lessors.—No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of our resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.

* * * * * * *

Sec. 223. Violation of Sections Generally.—a. Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this Act for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under section 65 or subsections 161 b., i., or o., shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than $20,000 or by imprisonment for not more than twenty years, or both.

b. Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 103 or 104 b. of this Act who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this Act, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than $50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term "basic component" means a facility structure, system, component or part thereof necessary to assure—

(1) the integrity of the reactor coolant pressure boundary,

(2) the capability to shut-down the facility and maintain it in a safe shut-down condition, or

(3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 103 or 104 b. of this Act is under construction and on the premises of each plant where components for such a facility are fabricated.

c. Any individual director, officer or employee of a person (or of a subcontractor or supplier thereto) indemnified under an agreement of indemnification under section 170 r. with respect to contractual activities undertaken for the purpose of—

> *(1) the storage or disposal of high-level radioactive waste, spent nuclear fuel, or transuranic waste, including the transportation of such materials to or from a storage or disposal site or facility; or*
>
> *(2) the construction and operation of a storage or disposal site or facility,*

who, by act or omission, knowingly and willfully violates or causes to be violated any section of this Act or any nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in section 11 q. shall, upon conviction, be subject to a fine of not more than $25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, punishment shall be a fine of not more than $50,000, or imprisonment for not more than five years, or both.

* * * * * * *

SEC. 234. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF LICENSING REQUIREMENTS.—

> a. Any person who (1) violates any licensing provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or (2) commits any violation for which a license may be revoked under section 186, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed $100,000 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties.
>
> b. Whenever the Commission has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing (1) setting forth the date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (3) advising of each penalty which the Commission proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the Commission to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulation

prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the Commission, if any, the penalty may be collected by civil action.

c. On the request of the Commission, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

Section 234A. Civil Monetary Penalties for Violations of Department of Energy Regulations at Waste Storage or Disposal Facilities.

a. With respect to activities by contractors indemnified under section 170 r. undertaken for the purpose of—

(1) the storage or disposal of high-level radioactive waste, spent nuclear fuel, or transuranic waste, including the transportation of such materials to or from a storage or disposal facility; and

(2) the construction and operation of a storage or disposal site or facility,

any person who has entered into such indemnification agreement (or any subcontractor or supplier thereto) who violates (or whose employee violates) any rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this Act (or expressly incorporated by reference by the Secretary for purposes of nuclear safety) shall be subject to appropriate enforcement action or a civil penalty of not to exceed $100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

b. (1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as the Secretary deems necessary to implement this section.

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

c. (1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. The notice shall inform such person of the opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within thirty calendar days after receipt of the notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code,

before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered a final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

d. The provisions of this section shall not apply to:

(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkley National Laboratory;

(3) American Telephone and Telegraph Technologies, Inc. (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratory;

(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

APPENDIX I

NUCLEAR REGULATORY COMMISSION INDEMNITY AGREEMENTS

INDEMNITY AGREEMENTS WITH REACTORS 100 ME(E) OR MORE

[As of July 23, 1987]

Binder number	First named insured	Reactor unit
EB-1	Commonwealth Edison Company	Dresden Unit 1
EB-2	Commonwealth Edison Company	Dresden Unit 2
EB-3	Commonwealth Edison Company	Dresden Unit 3
EB-4	Yankee Atomic Electric Co	Yankee Nuclear Power
EB-5	Consolidated Edison Company	Indian Point Unit 1
EB-6	Consolidated Edison Company	Indian Point Unit 2
EB-7	Power Authority of the State of NY	Indian Point Unit 3
EB-8	Philadelphia Electric Co	Peach Bottom Unit 2
EB-9	Philadelphia Electric Co	Peach Bottom Unit 3
EB-10	Southern California Edison Co	San Onofre Unit 1
EB-11	Connecticut Yankee	Haddam Neck
EB-12	Niagara Mohawk Power Corp	Nine Mile Point
EB-13	Jersey Central Power & Light Co	Oyster Creek
EB-14	Rochester Gas and Electric	Robert Emmet Ginna
EB-15	Northeast Nuclear Energy Co	Millstone Unit 1
EB-16	Northeast Nuclear Energy Co	Millstone Unit 2
EB-17	Northern States Power Co	Monticello
EB-18	Wisconsin Electric Power Co	Peach Bottom Unit 1
EB-19	Wisconsin Electric Power Co	Peach Bottom Unit 2
EB-20	Consumers Power Co	Palisades Nuclear Plant
EB-21	Carolina Power & Light Co	H.B. Robinson Power Plant
EB-22	Duke Power Company	Oconee Unit 1
EB-23	Duke Power Company	Oconee Unit 2
EB-24	Duke Power Company	Oconee Unit 3
EB-25	Florida Power & Light Co	Turkey Point Unit 3
EB-26	Florida Power & Light Co	Turkey Point Unit 4
EB-27	Virginia Electric & Power Co	Surry Unit 1
EB-28	Virginia Electric & Power Co	Surry Unit 2
EB-29	Commonwealth Edison Co	Quad-Cities Unit 1
EB-30	Commonwealth Edison Co	Quad-Cities Unit 2
EB-31	Boston Edison Co	Pilgrim Nuclear
EB-32	Vermont Yankee Nuclear Power Corp.	Vermont Yankee
EB-33	Public Service Company of Colorado	Fort St. Vrain
EB-34	Maine Yankee Atomic Power Co	Maine Yankee
EB-35	Florida Power Corp.	Crystal River
EB-36	Northern States Power Co	Prairie Island Unit 1
EB-37	Northern States Power Co	Prairie Island Unit 2
EB-38	Tennessee Valley Authority	Browns Ferry Unit 1
EB-39	Tennessee Valley Authority	Browns Ferry Unit 2
EB-40	Tennessee Valley Authority	Browns Ferry Unit 3
EB-41	Nebraska Public Power District	Cooper Nuclear Station
EB-42	Commonwealth Edison Co	Zion Nuclear Unit 1
EB-43	Commonwealth Edison Co	Zion Nuclear Unit 2
EB-44	Wisconsin Public Service Corp.	Kewaunee Nuclear
EB-45	Indiana & Michigan Power Co	Donald C. Cook

INDEMNITY AGREEMENTS WITH REACTORS 100 ME(E) OR MORE—Continued

[As of July 23, 1987]

Binder number	First named insured	Reactor unit
EB-46	Omaha Public Power District	Ft. Calhoun
EB-47	Power Authority of the State of NY	James A. Fitzpatrick
EB-48	Arkansas Power & Light Co	Arkansas Nuclear One
EB-49	Sacramento Municipal Utility District	Rancho Seco
EB-50	Iowa Electric Light & Power	Duane Arnold
EB-51	Georgia Power Company	Edwin I. Hatch
EB-52	Baltimore Gas & Electric Co	Calvert Cliffs Unit 1
EB-53	Baltimore Gas & Electric Co	Calvert Cliffs Unit 2
EB-54	Carolina Power & Light Co	Brunswick Steam Electric
EB-55	Carolina Power & Light Co	Brunswick Steam Electric
EB-56	Metropolitan Edison Co	Three Mile Island Unit 1
EB-57	Portland General Electric Co	Trojan Nuclear Plant
EB-58	Duquesne Light Co	Beaver Valley 1
EB-59	Florida Power & Light Co	St. Lucie Unit 1
EB-60	Public Service Electric & Gas Co	Salem Nuclear 1
EB-61	Toledo Edison Company	Davis-Besse Nuclear Unit 1
EB-62	Alabama Power Company	Joseph M. Farley
EB-63	Virginia Power Company	North Anna Unit 1
EB-64	Indiana & Michigan Power Co	Donald C. Cook Unit 2
EB-65	Metropolitan Edison Co	Three Mile Island Unit 2
EB-66	Georgia Power Company	Hatch Unit 2
EB-67	Arkansas Power & Light Co	Arkansas Nuclear Two
EB-68	Tennessee Valley Authority	Sequoyah Unit 1
EB-69	Virginia Electric & Power Co	North Anna Unit 2
EB-70	Public Service Electric & Gas Co	Salem Unit 2
EB-71	Alabama Power Company	Joseph M. Farley Unit 2
EB-72	Duke Power Company	McGuire Unit 1
EB-73	Tennessee Valley Authority	Sequoyah Unit 2
EB-74	Pacific Gas & Electric Co	Diablo Canyon Unit 1
EB-75	Southern California Edison Co	San Onofre Unit 2
EB-76	Commonwealth Edison Co	LaSalle Unit 1
EB-77	Mississippi Power & Light Co	Grand Gulf Unit 1
EB-78	Pennsylvania Power & Light	Susquehanna Unit 1
EB-79	South Carolina Electric & Gas	Summer Unit 1
EB-80	Southern California Edison	San Onofre Unit 3
EB-81	Duke Power Co	McGuire Unit 2
EB-82	Florida Power & Light Co	St. Lucie Unit 2
EB-83	Commonwealth Edison Co	LaSalle Unit 2
EB-84	Washington Public Power Supply System	WNP-2
EB-85	Pennsylvania Power & Light Co	Susquehanna Unit 2
EB-86	Union Electric Co	Callaway
EB-87	Duke Power Co	Catawba Unit 1
EB-88	Philadelphia Electric Co	Limerick Unit 1
EB-89	Commonwealth Edison Co	Byron Unit 1
EB-90	Long Island Lighting Co	Shoreham Unit 1
EB-91	Louisiana Power & Light Co	Waterford Unit 1
EB-92	Arizona Public Service Co	Palo Verde Unit 1
EB-93	Kansas Gas & Electric Co	Wolf Creek Unit 1
EB-94	Detroit Edison Co	Fermi Unit 2
EB-95	Pacific Gas & Electric Co	Diablo Canyon Unit 2
EB-96	Gulf States	River Bend
EB-97	Northeast Nuclear Energy Co	Millstone Unit 3
EB-98	Arizona Public Service Co	Palo Verde Unit 2
EB-99	Duke Power Co	Catawba Unit 2
EB-100	Cleveland Electric	Perry Unit 1
EB-101	Public Service Electric and Gas	Hope Creek
EB-102	Illinois Power	Clinton 1
EB-103	Public Service of New Hampshire	Seabrook 1

INDEMNITY AGREEMENTS WITH REACTORS 100 ME(E) OR MORE—Continued

[As of July 23, 1987]

Binder number	First named insured	Reactor unit
EB-104	Commonwealth Edison Co	Brainwood 1
EB-105	Carolina Power and Light Co	Shearon Harris 1
EB-106	Niagara Mohawk	Nine Mile Point 2
EB-107	Commonwealth Edison Co	Byron 2
EB-108	Georgia Power	Vogtle 1
EB-109	Arizona Public Service Co	Palo Verde 3
EB-110	Duquesne Light Co	Beaver Valley 2
EB-111		

INDEMNITY AGREEMENTS WITH REACTORS LESS THAN 100 MW(E)

University Reactors

[NOTE.—Most universities carry $250,000 in insurance, the minimum required under Price-Anderson; a few carry more. Financial protection for these facilities consists of $500 million in required federal indemnity plus the amount of insurance carried by the university—or $500,250,000 for most university reactors.]

Licensee

Arizona, University of
Brigham Young University
California State Polytechnic Institute
California, University of (4) [1]
Catholic University of America
Columbia University
Cornell University
Florida, University of
Georgia Institute of Technology (2) [1]
Idaho State University
Illinois, University of (2) [1]
Iowa State University
Kansas State University
Lowell Technologic Institute
Maryland, University of
Massachusetts Institute of Technology
Memphis State University
Michigan State University
Michigan, University of
Mississippi State University
Missouri, University of (2) [1]
New Mexico, University of
New York State University
North Carolina State University
Ohio State University
Oklahoma University
Oregon State University
Pennsylvania State University
Purdue University
Reed Institute
Rennsselaer Polytechnic Institute
Rhode Island and Providence Plantations
Texas A & M University (2) [1]

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[1] This number reflects licenses in effect at the facility. Where no number is given, only a single license is in effect.

Texas, University of
Utah, University of
Virginia Polytechnic Institute
Virginia, University of (2)
Washington State University
Washington, University of
Wisconsin, University of Worcester Polytechnic Institute

Federal Agency Reactors

[NOTE.—The federal government as a matter of policy does not carry insurance for the reactors it operates. Accordingly, financial protection for these reactors consists of the $500 million in required federal indemnity.]

Armed Forces Radiobiology Research Institute
U.S. Army Materials Research Agency
U.S. Geological Survey
National Aeronautics and Space Administration (2)
National Bureau of Standards
Maritime Administration
Veterans Administration Hospital

Non-Power Reactors

[NOTE.—Financial protection for non-power reactors consists of $500 million in required federal indemnity plus the required financial protection identified below.]

Licensee	Required financial protection
Aerotest Operation, Inc	$1,500,000
Battelle Memorial Institute	1,000,000
Battelle Memorial Institute	1,000,000
Dow Chemical Company	1,000,000
Gulf Oil Corporation (2)	1,500,000
General Electric Company (4)	18,500,000
Northrop Corporation	1,500,000
Rockwell International Corporation	1,000,000
Saxton Nuclear Experimental Corporation	6,300,000
Union Carbide Corporation	2,500,000
Westinghouse Electric Corporation	1,000,000
Westinghouse Electric Corporation	1,000,000

Power Reactors Less Than 100 MW(e)

[NOTE.—Financial protection for these facilities consists of $500 million in required federal indemnity plus the required financial protection identified below.]

Licensee	Required financial protection
Consumers Power Company (Big Rock Point)	$44,400,000
Dairyland Electric Cooperative (LaCrosse)	30,600,000
Detroit Edison (Fermi Unit 1)	[1] 630,000,000
Pacific Gas & Electric Company (Humboldt Bay)	53,300,000
Philadelphia Electric Company (Peach Bottom Unit 1)	[1] 630,000,000

[1] Fermi Unit 1 and Peach Bottom Unit 1 are single units of multi-unit large power reactor stations; the current maximum financial protection of $630,000,000, which is that required of large power reactors, covers all the the reactors at site.

Plutonium Processing and Fuel Fabrication Facilities

[NOTE.—Financial protection for these facilities consists of $400,000,000 in required federal indemnity plus the required financial protection identified below, or $560,000,000.]

Licensee	Required financial protection
Babcock & Wilcox Co.	$160,000,000
Babcock & Wilcox Co.	160,000,000
General Electric Co.	160,000,000
Exxon Nuclear Corporation	160,000,000
Westinghouse Electric Corporation	160,000,000

APPENDIX II

DEPARTMENT OF ENERGY PRIME CONTRACTORS COVERED BY THE PRICE-ANDERSON [1]

[As of April 11, 1986]

Contractor	Number of contracts
Allied Corporation	1
Associated Universities, Inc	1
AT&T Technology, Inc	1
Babcock and Wilcox Co	22
Battelle	1
Boeing Computer Services—Richland	1
Boeing Engineering and Construction Southeast, Inc	1
Burns and Roe, Inc	1
EG&G, Inc	1
EG&G Idaho Inc	1
E. I. Dupont Denemours & Co	1
Exxon Nuclear Idaho Co	1
Fluor Engineers and Constructors, Inc	1
GA Technologies, Inc	1
General Atomics	1
General Electric	6
Goodyear Atomic Corporation	1
Kaiser Hanford Engineering Co	1
Martin Marietta Energy Systems	1
Mason and Hanger	1
Monsanto Research Corporation	1
NLO Inc	1
RMI Co	1
Rockwell Hanford Operations	1
Rockwell International	2
Ross Aviation	1
Stone & Webster Engineering Corporation	1
Teledyne Energy Systems	2
TRW	1
UNC Resources, Inc	7
UNC Nuclear Industries	1
University of California	2
University of Chicago	1
University of Puerto Rico	1
Westinghouse Electric	4
Westinghouse Hanford Corporation	1

DEPARTMENT OF ENERGY PRIME CONTRACTORS COVERED BY THE PRICE-ANDERSON [1]—Continued

[As of April 11, 1986]

Contractor	Number of contracts
Westinghouse Idaho Nuclear Services	1
Westinghouse Materials Co. of Ohio	1
West Valley Nuclear Services	1
Total contracts	78
Total contractors	39

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[1] This list does not include contracts executed between the Department of Energy and utilities or other owners and generators of spent nuclear fuel and high-level radioactive waste pursuant to the Nuclear Waste Policy Act of 1982.

APPENDIX III

SUMMARY OF NUCLEAR LIABILITY INCIDENTS—NRC-INDEMNIFIED LICENSEES

[As of September 1, 1986]

Incident		Claim expense and/or loss payment	Current status of file
Number	Date		
1	June 1962	$1,284.52	Closed
2	January 1963	3,519.57	Closed
3	January 1963	328,763.48	Closed
4	June 1962	0	Closed
5	Not Determined	1,250.00	Closed
6	July 1964	76,403.25	Closed
7	June 1965	0	Closed
8	February 1966	263.13	Closed
9	May 1966	959.78	Closed
10	January 1965	12,512.36	Closed
11	August 1967	0	Closed
12	September 1968	1,460.41	Closed
13	November 1968	2,631.21	Closed
14	June 1963	105.58	Closed
15	May 1966	1,962.07	Closed
16	September 1969	54,838.68	Closed
17	September 1969	6,490.09	Closed
18	May 1972	35,298.93	Closed
19	May 1972	5,111.11	Closed
20	Not Determined	28,850.90	Closed
21	Not Determined	18,020.42	Closed
22	May 1972	0	Closed
23	May 1983	0	Closed
24	December 1972	0	Closed
25	March 1974	0	Closed
26	November 1974	1,039,028.28	Active [1]
27	March 1975	450.00	Closed
28	Not Determined	0	Closed
29	Not Determined	0	Closed
30	Not Determined	7,002.98	Closed
31	April 1976	4,683.11	Closed
32	October 1975	11,972.91	Closed
33	November 1977	590,104.56	Closed
34	January 1978	6,839.17	Closed
35	June-July 1977	1,886.88	Closed

SUMMARY OF NUCLEAR LIABILITY INCIDENTS—NRC-INDEMNIFIED LICENSEES—Continued

[As of September 1, 1986]

Incident		Claim expense and/or loss payment	Current status of file
Number	Date		
36	June-August 1977	0	Closed
37	February-March 1978	0	Closed
38	September 1975	28,217.31	Closed
39	Summer-Fall 1977	217.02	Closed
40	March 1979 and After	47,838,111.29	Active [1]
41	About October 1977	3,636.21	Closed
42	Since 1972	83,878.30	Closed
43	August 1976	48,171.23	Closed
44	February 1976	5,249.68	Closed
45	1973-1974	79,680.47	Active [1]
46	July-August 1978	53,579.36	Closed
47	Not Determined	0	Closed
48	1960-1963	0	Closed
49	May 1968	0	Closed
50	April 1979	0	Closed
51	1957-Undetermined Date	0	Active [1]
52	1971	0	Closed
53	Since 1979	0	Closed
54	1954 and 1955	0	Closed
55	April 1979		Closed
56	June-August 1977	0	Closed
57	February-March 1978	0	Closed
58	October 1977	0	Closed
59	January 1978	629.24	Closed
60	On or before August 1974	0	Closed
61	1976-1977	0	Closed
62	Since 1976	22,812.54	Active [1]
63	October 1977	28,748.40	Active [1]
64	October 1978	14,229.69	Closed
65	Not Determined	200.00	Closed
66	May 1975	0	Closed
67	Since January 26, 1976	95,429.77	Closed
68	April 6, 1979	5,881.88	Closed
69	1977 (Various Dates)	45,240.51	Closed
70	March 23, 1979	8,299.32	Active [1]
71	May 21, 1977	5,914.98	Closed
72	October 6, 1976	0	Closed
73	1971 Through 1975	0	Closed
74	None	0	Closed
75	May 27, 1979	0	Closed
76	None	0	Closed
77	1974	0	Closed
78	January 1980	0	Active [1]
79	1963-1973	0	Closed
80	November 30, 1966	0	Closed
81	March 17, 1981	0	Active
82	November 26, 1979	725.70	Closed
83	March 5, 1981	9,877.60	Active
84	November 20, 1968	1,484.50	Closed
85	1966-1979	0	Closed
86	July 24, 1979	0	Closed
87	September 19, 1976	0	Closed
88	March 19-20, 1981	0	Active
89	January 25, 1982	291,618.88	Active [1]
90	May 1-2, 1980	613,986.70	Closed
91	September 7, 1981	91.00	Closed
92	During Construction	15,328.34	Closed
93	March 1-11 and 31, 1977	46,112.17	Closed

SUMMARY OF NUCLEAR LIABILITY INCIDENTS—NRC-INDEMNIFIED LICENSEES—Continued

[As of September 1, 1986]

Incident		Claim expense and/or loss payment	Current status of file
Number	Date		
94	1976–1982	54,556.46	Active [1]
95	1958-October 13, 1980	3,558.19	Closed
96	September 1982	136,409.71	Closed
97	1966–1981	21,092.43	Closed
98	December 4, 1980	36,732.97	Closed
99	February 25, 1980	24,762.25	Active [1]
100	February 15, 1981	23,845.19	Active [1]
101	April 4, 1981	6,786.45	Active [1]
102	April 4, 1982	111,053.06	Active [1]
103	October 9, 1980	571.12	Closed
104	January 19, 1982	11,738.99	Closed
105	July 30, 1983	120,000.00	Closed
106	April 8, 1977–January 25, 1984	115,013.91	Active
107	1957–1984	0	Active [1]
108	October 1983	2,780.38	Active
109	September 1, 1974	13,368.02	Active [1]
110	June 1976	3,286.04	Active [1]
111	March 21, 1981	17,530.70	Active [1]
112	1977–1980	7,826.36	Active [1]
113	May 1981-November 1984	330,114.84	Active [1]
114	December 1980-March 1983	3,465.80	Active [1]
115	April 16, 1983	1,446.22	Active [1]
116	May 1985	5,813.27	Active [1]
117	February 1983-March 1984		
Total		52,640,797.83	

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[1] Open suit filed.

APPENDIX IV

DEPARTMENT OF ENERGY CONTRACTOR INDEMNITY PAYMENTS

[As of September 1, 1986]

Only one significant incident under the Price-Anderson contract indemnity system has been recorded. In 1961, a nuclear incident at a reactor occurred at a contract location in Idaho. Three U.S. servicemen lost their lives. Settlements were made in a total amount of $266,000 under the indemnity protection.

Records also indicate that in 1966 an employee of a subcontract to a firm contracting with the AEC spilled some depleted uranium on her hand while opening a vial of the material and claimed that she incurred damages from such incident. In 1970 the Atomic Energy Commission approved settlement of the claim under the indemnity provision of the contract in the amount of $5,000.

In September 1985, a case involving two DOE contractor employees who were injured while repackaging nuclear scrap material was settled. DOE will be obligated to indemnify that contractor for $4,000 once payment is made to the claimants. Final arrangements for payment have not been completed.

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